

MONTANA LEGISLATIVE HISTORY

Chapter 329 19 83

Bill H _____ S 293 Original bill & history ☒ C

H. Committee on Human Services

Hearing Date(s) 3-11 _____ C

3-14 _____ C

_____ C

_____ C

Date Out 3-14 _____ C

S. Committee on Public Health, Welfare,

Hearing Date(s) 2-9 _____ C

2-16 _____ C

2-18 _____ C

_____ C

DATE OUT 2-18

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

2ND READING: 03/22/83, BE CONCURRED IN AYES: 88; NAYS: 0
3RD READING: 03/23/83, BE CONCURRED IN AYES: 89; NAYS: 5

RETURNED TO SENATE WITH AMENDMENTS: 3/24/83
2ND READING: 04/01/83 AYES: 46; NAYS: 0
3RD READING: 04/04/83 AYES: 46; NAYS: 0

TRANSMITTED TO GOVERNOR: 04/9/83
SIGNED: 04/12/83, CHAPTER 445

SB 293 -- HAGER, WINSLOW, MANUEL -- TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO CERTIFICATES OF NEED FOR HEALTH CARE FACILITIES; ... AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

INTRODUCED: 01/26/83
REFERRED TO COMMITTEE ON PUBLIC HEALTH, WELFARE, & SAFETY: 01/26/83
HEARING: 2/9/83
REPORT: 02/19/83, DO PASS, AS AMENDED
2ND READING: 02/22/83 AYES: 49; NAYS: 0
3RD READING: 02/23/83 AYES: 49; NAYS: 0

TRANSMITTED TO HOUSE: 02/23/83
REFERRED TO COMMITTEE ON HUMAN SERVICES: 02/28/83
HEARING: 3/11/83
REPORT: 03/15/83, BE CONCURRED IN
2ND READING: 03/18/83, BE CONCURRED IN AYES: 84; NAYS: 8
3RD READING: 03/19/83, BE CONCURRED IN AYES: 84; NAYS: 3

RETURNED TO SENATE: 3/19/83

TRANSMITTED TO GOVERNOR: 03/28/83
SIGNED: 4/2/83, CHAPTER 329

SB 294 -- HAZELBAKER, THOFT, ET AL. -- REVISING THE STATUTES GOVERNING THE MANNER IN WHICH TAXES AND ASSESSMENTS ARE MADE AGAINST IRRIGATION DISTRICT LANDS

INTRODUCED: 01/26/83
REFERRED TO COMMITTEE ON NATURAL RESOURCES: 01/26/83
HEARING: 2/9/83
REPORT: 02/14/83, DO PASS
2ND READING: 2/16/83 AYES: 50; NAYS: 0
3RD READING: 02/18/83 AYES: 47; NAYS: 0

TRANSMITTED TO HOUSE: 2/18/83
REFERRED TO COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION: 03/01/83
HEARING: 3/11/83
REPORT: 03/17/83, BE CONCURRED IN
2ND READING: 03/21/83, BE CONCURRED IN AYES: 91; NAYS: 4
3RD READING: 03/22/83, BE CONCURRED IN AYES: 91; NAYS: 2

RETURNED TO SENATE: 3/22/83

TRANSMITTED TO GOVERNOR: 03/28/83
SIGNED: 4/2/83, CHAPTER 330

SB 295 -- MARBUT, TURNAGE, ET AL. -- TO CLARIFY THAT INTEREST EARNED ON THE DEPOSIT OF COUNTY AND MUNICIPAL IMPROVEMENT DISTRICT FUNDS AND INTEREST EARNED ON THE

BILL NO. 193INTRODUCED BY Hagan Manuel

BY REQUEST OF THE DEPARTMENT OF

HEALTH AND ENVIRONMENTAL SCIENCES AND

THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO CERTIFICATES OF NEED FOR HEALTH CARE FACILITIES; AMENDING SECTIONS 50-5-101, 50-5-301, 50-5-302, 50-5-304 THROUGH 50-5-306, AND 50-5-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-5-101, MCA, is amended to read:

"50-5-101. Definitions. As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, free-standing or connected to another health care facility, which provides adults, on an intermittent basis, with the care necessary to meet the needs of daily living.

(3) "Affected persons" means the applicant, members of the public who are to be served by the proposal, health care facilities located in the geographic area affected by the

application, agencies which establish rates for health care facilities, ~~third-party payers who reimburse health care facilities in the area affected by the proposal,~~ and agencies which plan or assist in planning for such facilities, including any agency qualifying as a health systems agency pursuant to Title XV of the Public Health Service Act.

(4) "Ambulatory surgical facility" means a facility, not part of a hospital, which provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

~~(5) "Batch" means those letters of intent and applications of a specified category and within a specified region of the state, as established by department rule, that are accumulated during a single batching period.~~

~~(6) "Batching period" means a period, not exceeding 1 month, established by department rule during which letters of intent for specified categories of new institutional health services and for specified regions of the state may be accumulated pending further processing of all letters of intent within the batch.~~

~~(5)(7) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.~~

~~(8) "Capital expenditure" means an expenditure made by~~

or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance.

~~(6)(9)~~ "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

~~(10)~~ "Challenge period" means a period, not exceeding 1 month, established by department rule during which any person may apply for comparative review with an applicant whose letter of intent has been received during the preceding batching period.

~~(7)(11)~~ "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

~~(8)(12)~~ "College of American pathologists" means the organization nationally recognized by that name with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

~~(13)~~ "Comparative review" means a joint review of two

or more certificate of need applications within a given batch which are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

~~(9)(14)~~ "Construction" means the physical erection of a health care facility and any stage thereof, including ground breaking, or remodeling, replacement, or renovation of an existing health care facility.

~~(10)(15)~~ "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

~~(11)(16)~~ "Federal acts" means federal statutes for the construction of health care facilities.

~~(12)(17)~~ "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

~~(13)(18)~~ "Health care facility" or "facility" means any institution, building, or agency or portion thereof, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory

surgical facilities, health maintenance organizations, home health agencies, hospitals, infirmaries, kidney treatment centers, long-term care facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, and adult day-care centers.

~~(14)(19)~~ "Health maintenance organization" means a public or private organization organized as defined in 42 U.S.C. 300e, as amended.

~~(20) "Health systems agency" means an entity which is organized and operated in the manner described in 42 U.S.C. 3001-2 and which is capable, as determined by the secretary of the United States department of health and human services, of performing each of the functions described in 42 U.S.C. 3001-2.~~

~~(15)(21)~~ "Home health agency" means a public agency or private organization or subdivision thereof which is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

~~(16)(22)~~ "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons. Services provided may or

may not include obstetrical care, emergency care, or any other service as allowed by state licensing authority. A hospital has an organized medical staff which is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. This term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

~~(17)(23)~~ "Infirmiry" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmiry--A" provides outpatient and inpatient care;

(b) an "infirmiry--B" provides outpatient care only.

~~(18)(24)~~ "Joint commission on accreditation of hospitals" means the organization nationally recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants accreditation status to any health care facility that it finds meets its standards and requirements.

~~(19)(25)~~ "Kidney treatment center" means a facility which specializes in treatment of kidney diseases, including freestanding hemodialysis units.

~~(20)(26)~~ (a) "Long-term care facility" means a facility

or part thereof which provides skilled nursing care or intermediate nursing care to a total of two or more persons or personal care to more than three persons who are not related to the owner or administrator by blood or marriage, with these degrees of care defined as follows:

(i) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(ii) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(iii) "Personal care" means the provision of services and care which do not require nursing skills to residents needing some assistance in performing the activities of daily living.

(b) Hotels, motels, boarding homes, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care are not long-term care facilities.

(27) "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions which is used to provide medical or other health services and which costs more than the expenditure

thresholds established in or pursuant to 50-5-301(5). The term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office or hospital and has been determined under Title XVIII of the Social Security Act to meet the requirements of paragraphs (10) and (11) of section 1861(s) of that act.

~~(21)(28) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients or the rehabilitation of such persons, or any combination of these services.~~

~~(22) "New institutional health services" means:~~
~~(a) the construction, development, or other establishment of a health care facility which did not previously exist;~~

~~(b) any expenditure by or on behalf of a health care facility within a 12-month period in excess of \$150,000, which, under generally accepted accounting principles consistently applied, is a capital expenditure, whenever a health care facility or a person on behalf of a health care facility makes an acquisition under lease or comparable arrangement or through donation, which would have required review if the acquisition had been by purchase, such~~

~~acquisition shall be considered a capital expenditure subject to review.~~

~~(c) a change in bed capacity of a health care facility which increases or decreases the total number of beds, redistributes beds among various service categories, or relocates such beds from one physical facility or site to another over a 2-year period by more than 10 beds or 10% of the total licensed bed capacity, whichever is less;~~

~~(d) health services which are offered in or through a health care facility and which were not offered on a regular basis in or through such health care facility within the 12-month period prior to the time such services would be offered or the deletion by a health care facility of a service previously offered;~~

~~(e) the expansion of a geographic service area of a home health agency.~~

~~(23)(29) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.~~

~~(24)(30) "Observation bed" means a bed occupied for not more than 6 hours by a patient recovering from surgery or other treatment.~~

~~(25)(31) "Offer" means the holding out by a health care facility that it can provide specific health services.~~

~~(26)(32) "Outpatient facility" means a facility,~~

located in or apart from a hospital, providing, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

~~(27)(33)~~ "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

~~(28)(34)~~ "Person" means any individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

~~(29)(35)~~ "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

~~(30)(36)~~ "Rehabilitation facility" means a facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

~~(31)(37)~~ "Resident" means a person who is in a long-term care facility for intermediate or personal care.

1 ~~{22} "State plan" means the state medical facility plan~~
2 ~~provided for in part 4.~~

3 {38} "State health plan" means the plan prepared by the
4 department pursuant to 42 U.S.C. 300n-2(a)(2)."

5 Section 2. Section 50-5-301, MCA, is amended to read:

6 "50-5-301. When application certificate of need is
7 required. (1) Unless a person has submitted an application
8 has been submitted to--and for and is the holder of a
9 certificate of need granted by the department, no person he
10 may not initiate any of the following:

11 ~~{1} a new institutional health service as defined in~~
12 ~~50-5-101;~~

13 ~~{2} any expenditure by or on behalf of a health care~~
14 ~~facility in excess of \$150,000 made in preparation for the~~
15 ~~offering or development of a new institutional health~~
16 ~~service and any arrangement or commitment made for financing~~
17 ~~the offering or development of the new institutional health~~
18 ~~services. Expenditures made in the preparation for the~~
19 ~~offering of a new institutional health service shall include~~
20 ~~expenditures for architectural designs, preliminary plans,~~
21 ~~working drawings, specifications, studies, and surveys;~~

22 {a} the incurring of an obligation by or on behalf of
23 a health care facility for any capital expenditure, other
24 than to acquire an existing health care facility, that
25 exceeds the expenditure thresholds established in or

1 pursuant to subsection (5), the costs of any studies,
2 surveys, designs, plans, working drawings, specifications,
3 and other activities (including staff effort and consulting
4 and other services) essential to the acquisition,
5 improvement, expansion, or replacement of any plant or
6 equipment with respect to which an expenditure is made, must
7 be included in determining if the expenditure exceeds the
8 expenditure thresholds.

9 {b} a change in the bed capacity of a health care
10 facility by 10 beds or 10%, whichever is less, in any 4-year
11 period through:

12 {i} an increase or decrease in the total number of
13 beds;

14 {ii} a redistribution of beds among various categories;

15 or

16 {iii} a relocation of beds from one physical facility
17 or site to another;

18 {c} the addition of a health service that is offered
19 by or on behalf of a health care facility which has not
20 offered by or on behalf of the facility within the 12-month
21 period before the month in which the service would be
22 offered and which will result in additional annual operating
23 and amortization expenses of \$50,000 or more;

24 {d} the acquisition by any person of major medical
25 equipment. In determining whether medical equipment costs

more than the expenditure thresholds established in subsection (5), the costs of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to acquiring the equipment must be included. If the equipment is acquired for less than fair market value, the term "cost" includes the fair market value.

(e) the incurring of an obligation for a capital expenditure by any person to acquire an existing health care facility if:

(i) the person has failed to submit the notice of intent required by 50-5-302(3); or

(iii) the department finds within 30 days after it receives the notice of intent required by 50-5-302(3) that the acquisition will result in a change in the services or bed capacity of the facility;

(f) the construction, development, or other establishment of a health care facility which did not previously exist or which is being replaced; or

(g) the expansion of the geographical service area of a home health agency.

(2) For purposes of this section:

(a) "obligation for capital expenditure" does not include the authorization of bond sales or the offering or sale of bonds pursuant to the state long-range building

program under Title 17, chapter 5, part 4, and Title 18, chapter 2, part 1;

(b) a health maintenance organization is to be considered a health care facility except to the extent exempted from certificate of need requirements as prescribed in rules adopted by the department.

(3) A proposed change in a project associated with a capital expenditure under subsections (1)(a) or (1)(b) for which the department has previously issued a certificate of need requires subsequent certificate of need review if the change is proposed within 1 year after the date the activity for which the capital expenditure was granted a certificate of need is undertaken. As used in this subsection, a "change in project" includes but is not limited to any change in the bed capacity of a health care facility as described in subsection (1)(b) and the addition or termination of a health care service.

(4) If a person acquires an existing health care facility without a certificate of need and proposes to change, within 1 year after the acquisition, the services or bed capacity of the health care facility, the proposed change requires a certificate of need if one would have been required originally under subsection (1)(e).

(5) (a) Expenditure thresholds for certificate of need review are established as follows:

(i) For acquisition of equipment, the expenditure threshold is \$500,000.

(ii) For construction of health care facilities, the expenditure threshold is \$750,000.

(b) The department may by rule establish thresholds higher than those established in subsection (5)(a) if necessary and appropriate to accomplish the objectives of this part."

Section 3. Section 50-5-302, MCA, is amended to read:

"50-5-302. Application Notice of intent -- application and review process. (1) The department may adopt rules including but not limited to rules for:

(a) the form and content of notices of intent and applications;

(b) the scheduling and consolidation of reviews of similar proposals;

(c) the abbreviated review of a proposal that:

(i) does not significantly affect the cost or use of health care;

(ii) is necessary to eliminate or prevent imminent safety hazards or to repair or replace a facility damaged or destroyed as a result of fire, storm, civil disturbance, or any act of God;

(iii) is necessary to comply with licensure or certification standards; or

(iv) has been approved by the legislature pursuant to the long-range building program under Title 17, chapter 5, part 4, and Title 18, chapter 2, part 1, providing the legislative findings accompanying such approval give consideration to the criteria of 50-5-304, and subject to the provisions of [section 9];

(d) the format of public informational hearings and reconsideration hearings; and

(e) the establishment of batching periods for certificate of need applications for new beds, establishment of new services, expansion of existing services, and replacement of health care facilities.

(2) At least 30 days before any person acquires or enters into a contract to acquire an existing health care facility, the person shall submit to the department and the appropriate health systems agency a notice of his intent to acquire the facility and of the services to be offered in the facility and its bed capacity.

(3) Any person intending to initiate an activity for which a certificate of need is required shall submit a letter of intent to the department. After receipt the letter of intent must be placed in the appropriate batch, if any. After expiration of the challenge period following the batching period in which the letter of intent was submitted or if no batching is required, after receipt of the letter

of intent, the department shall send the applicant a person an application form requiring the submission of information considered necessary by the department to determine if the proposed activity meets the standards in 50-5-304. ~~The form and content of the notification of intent and applications for certificates of need shall be prescribed by rule by the departments.~~

~~(2)(4)~~ Within 15 calendar days after receipt of the application, the department shall determine whether it contains sufficient information to determine if the proposed activity meets the standards in 50-5-304 is complete. If the application is found incomplete, the department shall request the necessary additional information. if the applicant fails to submit the necessary additional information requested by the department by the deadline as prescribed by department rules for considering such reviews, a new letter of intent and application must be submitted and the application will be dropped from the current batch.

~~(3)(5)~~ After the application has all applications in the current batch have been designated complete or, if an application does not require batching, after it is designated complete, notification must be sent to the applicant applicants and all other affected persons regarding the department's projected time schedule for review of the application and the review period time

schedule applications. The review period for the an application may be no longer than 90 calendar days after the notice is sent unless a longer period is agreed to by the applicant or, if the application has been batched, by all applicants in the batch. All completed applications pertaining to similar types of services, facilities, or equipment affecting the same health service area may be considered in relation to each other. During the review period a public hearing may be held if requested by one or more an affected persons person or when considered appropriate by the department.

~~(4)(6)~~ The department shall, after considering all comments received during the review period, issue a certificate of need, with or without conditions, or reject deny the application. The department shall notify the applicant and affected persons of its decision within 5 working days after expiration of the review period."

Section 4. Section 50-5-304, MCA, is amended to read:
"50-5-304. Review criteria, required findings, and standards. (1) The department shall by rule promulgate and utilize, as appropriate, specific criteria for reviewing certificate of need applications under this chapter, including but not limited to the following considerations and required findings:

(1)(a) the relationship of the health services being

1 reviewed to the applicable health systems plan, state health
 2 plan, and annual implementation plan developed pursuant to
 3 Title XV of the Public Health Service Act, as amended;

4 (2)(b) the relationship of services reviewed to the
 5 long-range development plan, if any, of the person providing
 6 or proposing the services;

7 (3)(c) the need that the population served or to be
 8 served by the services has for the services;

9 (4)(d) the availability of less costly quality
 10 equivalent or more effective alternative methods of
 11 providing such services;

12 (5)(e) the immediate and long-term financial
 13 feasibility of the proposal as well as the probable impact
 14 of the proposal on the costs of and charges for providing
 15 health services by the person proposing the health service;

16 (6)(f) the relationship and financial impact of the
 17 services proposed to be provided to the existing health care
 18 system of the area in which such services are proposed to be
 19 provided and the consistency of the proposal with joint
 20 planning efforts by health care providers in the area;

21 (7)(g) the availability of resources, including health
 22 manpower, management personnel, and funds for capital and
 23 operating needs for the provision of services proposed to be
 24 provided and the availability of alternative uses of such
 25 resources for the provision of other health services;

1 (8)(h) the relationship, including the organizational
 2 relationship, of the health services proposed to be provided
 3 to ancillary or support services;

4 (9)(i) the special needs and circumstances of those
 5 entities which provide a substantial portion of their
 6 services or resources, or both, to individuals not residing
 7 in the health service areas in which the entities are
 8 located or in adjacent health service areas. Such entities
 9 may include medical and other health profession schools,
 10 multidisciplinary clinics, and specialty centers.

11 (10)(j) the special needs and circumstances of health
 12 maintenance organizations for which assistance may be
 13 provided under Title XIII of the Public Health Service Act.
 14 Such needs and circumstances include the needs of and costs
 15 to members and projected members of the health maintenance
 16 organization in obtaining health services and the potential
 17 for a reduction in the use of inpatient care in the
 18 community through an extension of preventive health services
 19 and the provision of more systematic and comprehensive
 20 health services.

21 (11)(k) the special needs and circumstances of
 22 biomedical and behavioral research projects which are
 23 designed to meet a national need and for which local
 24 conditions offer special advantages;

25 (12)(l) in the case of a construction project, the

costs and methods of the proposed construction, including the costs and methods of energy provision, and the probable impact of the construction project reviewed on the costs of providing health services by the person proposing the construction project;

~~(13)~~(m) the distance, convenience, cost of transportation, and accessibility of health services for persons who live outside urban areas in relation to the proposal; and

~~(14)~~(n) any other criteria, required findings, or requirements for reviewing certificate of need applications cited in the federal regulations found in Title 42, CFR, Part 123, as amended.

~~(2) If an application for new long-term care beds will involve new or increased use of medicaid funds and the department of social and rehabilitation services determines that such use would cause the state medicaid budget for long-term care facilities to be exceeded, the department of health and environmental sciences may impose conditions on a certificate of need for new long-term care beds, including limitation on the number of approved beds which may be certified for medicaid patients. Availability of medicaid funding may be the basis for imposing conditions but may not be the sole basis for denial of a certificate of need."~~

Section 5. Section 50-5-305, MCA, is amended to read:

"50-5-305. Period of validity of approved application.

A ~~(1) Unless an extension is granted pursuant to subsection (2), a certificate of need shall terminate 1 year after the date of issuance unless expire:~~

~~(1) the applicant has commenced construction if the project provides for construction or has incurred an enforceable capital expenditure commitment for projects not involving construction; or~~

~~(2) the certificate of need validity period is extended by the department for one additional period of 6 months upon showing good cause by the applicant for the extension.~~

~~(a) 1 year after its issuance if the applicant has not commenced construction on a project requiring construction or has not incurred an enforceable capital expenditure commitment for a project not requiring construction;~~

~~(b) 1 year from the estimated time for completion as shown in the application if the approved project is not complete; or~~

~~(c) when the department determines, after opportunity for a hearing, that the holder of the certificate of need has violated the provisions of this chapter, rules adopted hereunder, or the terms of the certificate of need.~~

~~(2) The holder of an unexpired certificate of need may apply to the department to extend the term of the~~

1 certificate of need for one additional period not to exceed
 2 6 months. The department may grant such an extension upon
 3 the applicant's demonstrating good cause as defined by
 4 department rule.

5 (3) The holder of an unexpired certificate of need
 6 shall report to the department in writing on the status of
 7 his project at the end of each 90-day period after being
 8 granted a certificate of need until completion of the
 9 project for which the certificate of need was issued."

10 Section 6. Section 50-5-306, MCA, is amended to read:

11 "50-5-306. Right to hearing and appeal. (1) The
 12 ~~applicant or a health systems agency designated pursuant to~~
 13 ~~title XV of the Public Health Service Act~~ An affected person
 14 may request and shall be granted a public hearing before the
 15 department to hold a public hearing and to reconsider its
 16 decision, if the request is received by the department
 17 within 30 calendar days after the decision is announced. Any
 18 other affected person may, for good cause, request the
 19 department to reconsider its decision at such a hearing.
 20 The department shall grant the request if the affected
 21 person submits the request in writing showing good cause as
 22 defined in rules adopted by the department and if the
 23 request is received by the department within 30 20 calendar
 24 days after the initial decision is announced. The public
 25 hearing to reconsider shall be held, if warranted or

1 required, within 30 20 calendar days after its request. The
 2 department shall make its final decision and written
 3 findings of fact and conclusions of law in support thereof
 4 within 45 30 days after the conclusion of the
 5 reconsideration hearing. ~~The hearing shall be conducted in~~
 6 ~~accordance with 2-4-601 through 2-4-623.~~

7 (2) ~~An aggrieved applicant or a health systems agency~~
 8 ~~designated pursuant to title XV of the Public Health Service~~
 9 ~~Act~~ affected person may appeal the department's final
 10 decision to the board by filing a written notice of appeal
 11 stating the specific findings of fact and conclusions of law
 12 being appealed and the grounds. An affected person does not
 13 have to request the department to hold a reconsideration
 14 hearing prior to filing an administrative appeal to the
 15 board. The notice of appeal must be received by the board
 16 within 30 calendar days after formal notice of the
 17 department's final decision was issued. The board shall give
 18 public notice of the appeal within 10 days, and the hearing
 19 shall be held within 30 days after receipt of the notice of
 20 appeal.

21 (3) ~~The scope of the hearing before the board is~~
 22 ~~limited to a review of the record upon which the department~~
 23 ~~made its decision~~ must be a hearing de novo with respect to
 24 the findings and conclusions identified pursuant to
 25 subsection (2) and must be conducted pursuant to the

~~contested case provisions of the Montana Administrative Procedure Act. The board upon request of any party to an appeal before the board shall hear oral arguments and receive written briefs. Within 45 calendar days after the conclusion of the public hearing, the board shall make and issue its decision, supported by written findings of fact and conclusions of law. The board may affirm, reverse, or modify the department's decision or remand it for further proceedings. The board may reverse or modify the department's decision if the appellant's rights have been prejudiced for any of the reasons found in 2-4-704.~~

(4) The final decision of the board shall be considered the decision of the department for purposes of an appeal to district court. Any affected person may appeal this decision to the district court as provided in Title 2, chapter 4, part 7.

(5) The department may by rule prescribe in greater detail the hearing and appellate procedures."

Section 7. Section 50-5-308, MCA, is amended to read:

~~"50-5-308. Special circumstances. In the event of destruction of any part of a health care facility as a result of fire, storm, civil disturbance, or any act of God, the department may issue a certificate of need for only the replacement of the previously existing facility or portion thereof. The department shall issue a certificate of need~~

for a proposed capital expenditure if:

~~(1) the capital expenditure is required to eliminate or prevent imminent safety hazards as defined by federal, state, or local fire, building, or life safety codes or regulations or to comply with state licensure, certification, or accreditation standards; and~~

~~(2) the department has determined that the facility or service for which the capital expenditure is proposed is needed and that the obligation of the capital expenditure is consistent with the state health plan."~~

~~NEW SECTION. Section 8. Report and recommendations to legislature on medicaid funding. (1) At the commencement of each legislative session, the department of social and rehabilitation services shall submit a report to the legislature concerning medicaid funding for the next biennium. This report must include at least the following elements:~~

~~(a) analysis of past and present funding levels for the various categories and types of health services eligible for medicaid reimbursement;~~

~~(b) projected increased medicaid funding needs for the next biennium. These projections shall identify the effects of projected population growth and demographic patterns on at least the following elements:~~

~~(i) trends in unit costs for services, including~~

1 inflation;

2 (ii) trends in use of services;

3 (iii) trends in medicaid recipient levels; and

4 (iv) the effects of new and projected facilities and

5 services for which a need has been identified in the state

6 health plan prepared pursuant to 42 U.S.C. 300m-2(a)(2).

7 (2) In addition to the report, the department of

8 social and rehabilitation services shall present a

9 recommendation of funding levels for the medicaid program.

10 The recommendation need not be consistent with the state

11 health plan.

12 (3) In arriving at the projections and recommendation

13 required in subsections (1) and (2), the department of

14 social and rehabilitation services shall consult with the

15 department of health and environmental sciences.

16 (4) In making its appropriations for medicaid funding,

17 the legislature shall specify the portions of medicaid

18 funding anticipated to be allocated to specific categories

19 and types of health care services.

20 NEW SECTION. Section 9. Exemptions from certificate

21 of need review. (1) Except as provided in subsection (2),

22 the following are exempt from certificate of need review:

23 (a) expenditures by a health care facility for

24 nonmedical and nonclinical facilities and services unrelated

25 to the operation of the health care facility if a letter of

1 intent is submitted pursuant to 50-5-302 at least 30 days

2 prior to incurring an obligation for capital expenditures to

3 enable the department to determine whether the expenditures

4 are exempt;

5 (b) a project proposed by an agency of state

6 government that has been approved by the legislature

7 pursuant to the long-range building program under Title 17,

8 chapter 5, part 4, and Title 18, chapter 2, part 1.

9 (2) If the secretary of the United States department

10 of health and human services notifies the state that the

11 sanctions provided by section 1521 of the Public Health

12 Service Act and all acts amendatory thereto or any other

13 federal statute for noncompliance with federal certificate

14 of need requirements are to be imposed, the department may

15 by rule require certificate of need review for projects

16 exempted by subsection (1) that are otherwise subject to the

17 provisions of this part. Any rule adopted by the department

18 under this subsection is effective only until the 10th day

19 of the next regular legislative session following the

20 adoption of the rule.

21 NEW SECTION. Section 10. Codification instructions.

22 (1) Section 8 is intended to be codified as an integral part

23 of Title 53, chapter 6, part 1, and the provisions of Title

24 53, chapter 6, part 1, apply to section 8.

25 (2) Section 9 is intended to be codified as an

1 integral part of Title 50, chapter 5, part 3, and the
2 provisions of Title 50, chapter 5, apply to section 9.

3 NEW SECTION. Section 11. Severability. If a part of
4 this act is invalid, all valid parts that are severable from
5 the invalid part remain in effect. If a part of this act is
6 invalid in one or more of its applications, the part remains
7 in effect in all valid applications that are severable from
8 the invalid applications.

9 NEW SECTION. Section 12. Saving clause. This act does
10 not affect rights and duties that matured, penalties that
11 were incurred, or proceedings that were begun before the
12 effective date of this act.

13 NEW SECTION. Section 13. Effective date. This act is
14 effective on passage and approval.

-End-

48TH

LEGISLATIVE SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
SB 256	1-22	2-4,11	TABLED	ON 2-11-83					
SB 266	1-24	2-7,11	2-11			2-11			
SB 271	1-24	2-4,11	2-11		2-11, as amended				
SB 274	1-24	2-7,16,18	2-18		2-18				
SB 289	1-26	2-9,11	2-11		2-11				
SB 293	1-26	2-9,16,18	2-18			2-18			
SB 298	1-28	2-14	2-14	2-14					
SB 349	2-3	2-11	2-11	2-11					
SB 395	2-10	2-14	2-14		2-14				
SB 395	2-15	2-16	2-16	2-16					
SB 404	2-12	2-16	2-16	2-16					
SB 410	2-14	2-16,18	2-18			2-18			
SB 418	2-15	2-18	2-18			2-18			
SB 439	2-17	2-18	2-18	2-18					
SB 446	2-16	2-18	2-18	2-18					
SB 447	2-16	2-18	2-18			2-18			

Use a separate sheet for Senate, House Bills, and Resolutions.

MINUTES OF THE MEETING
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE
MONTANA STATE SENATE

FEBRUARY 9, 1983

The meeting of the Public Health, Welfare and Safety Committee was called to order by Chairman Tom Hager on Wednesday, February 9, 1983 in Room 410 of the State Capitol Building.

ROLL CALL: All members were present. Woody Wright, staff attorney was also present.

Many visitors were also in attendance. See attachments.

CONSIDERATION OF HOUSE BILL 96: Representative Dan Yardly of House District 74 in Livingston, the chief sponsor of House Bill 96, gave a brief resume of the bill. This bill is an act to clarify and law relating to junkyards along roads by amending the provisions relating to motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, and sanitary landfills to conform to the applicable provisions of Title 75, Chapter 10, MCA and by clarifying the provisions on additional screening.

Larry Mitchell, representing the Department of Health and Environmental Sciences, stood in support of the bill. He stated that Montana presently has two laws which regulate the location screening and licensing of wrecking yards: The Highway Department's Junkyards Along Roads Act, and the Health Department's Motor Vehicle Recycling and Disposal Act. The Health Department's law is more restrictive in that it requires screening and licensing of all motor vehicle wrecking facilities. The Highway law is concerned only with those wrecking facilities and junkyards within 1000 feet of federal primary or interstate highways. The Health Department licenses all wrecking facilities but has no authority over junkyards which are not wrecking facilities. Federal law requires that the states control junkyards, including motor vehicle wrecking facilities, along federal primary or interstate highways or face a possible 10% reduction in federal highway aid. Except for the Health Department's lack of authority over non-wrecking facility junkyards, Title 75, Chapter 15, Part 2, MCA, could be repealed in its entirety without affecting the state's highway funding.

The next best solution is offered by this bill. It takes wrecking facilities and solid waste disposal areas out of the Highway's definition of junk or junkyards and clarifies that those activities are and will remain regulated under the existing authority of the Health Department. With the passage of this bill, it will be clear that Montana has one law which regulates the establishment and operation of wrecking facilities administered

PUBLIC HEALTH
PAGE THREE
FEBRUARY 9, 1983

Kenneth Edden, Past President of the Lewis and Clark Medical Association and he himself an internist, stood in support of the bill. This bill if passed would make his job a lot easier.

Jerome Loendorf, of the Montana Medical Association and also the hospital health care facilities, offered an amendment on page 2, line 5. He asked that the Committee amended the bill to say dietitians or other related field that the baccalaureate is received in from college.

Frank Davis, representing the Montana Pharmaceutical Association, stood in support of the bill.

With no further proponents, the chairman called on the opponents, hearing none the meeting was opened to a question and answer period from the Committee.

Senator Marbut asked about the education specifics and the tighter standards.

Senator Norman closed. He stated that this a very good bill and urged the Committee to give it a favorable recommendation.

At this point Senator Hager turned the chair over to Senator Marbut while he presented his bill.

CONSIDERATION OF SENATE BILL 293: Senator Tom Hager of Senate District 30, chief sponsor of SB 293, gave a brief resume of the bill. This bill is an act to generally revise and clarify the laws relating to certificates of need for health care facilities; amending Sections 50-5-101, 50-5-301, 50-5-302, 50-5-304 through 50-5-304 through 50-5-306 and 50-5-308, MCA, and providing an immediate effective date.

Senator Hager read a letter from George Fenner, Administrator, of the Division of Health Services and Medical Facilities of the Department of Health, which stated that SB 293 is an act to generally revise and clarify the laws relating to Certificate of Need for health care facilities. Revisions of the Certificate of Need law was last made by the 46th Legislature in 1979. We all know there have been considerable changes in health care technology, health facility demands, and health care costs since 1979. Mr. Fenner's letter was handed out to the Committee for their review. See exhibit 8.

Steve Purlmutter, attorney for the Department of Health, stated that he was responsible for helping draft the bill. He then reviewed the bill for the Committee. He urged the Committee to give the bill a "DO PASS" recommendation on the bill.

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PUBLIC HEALTH
FEBRUARY 9, 1983

John LaFaver, Director of the Department of Social and Rehabilitation Services, stood in support of the bill. He stated that this bill is essential to allow the department of SRS to control Medicaid costs. The Medicaid program will spend \$200 million next biennium. Because of its magnitude, cost control is essential for the state's continued financial viability. The bill will assure that the number of nursing home beds remains consistent with the number allowed and funded during the legislative process.

Ada Weeding, representing the Montana Health Systems Agency, stood in support of the bill. She is the chairman of the Eastern Montana Subarea Advisory Council and a member of the governing board of the Montana Health Systems Agency. She stated that she also represents the consumer interests as a member of the governor's statewide health coordinating council. It is very important that, as a consumer, she have some input as to the health care system in this state and more importantly in her own local area. The Certificate of Need process affords the opportunity for consumers to provide necessary testimony and statements which help direct the decision-making processes regarding the health care system and delivery of services.

Ken Rutledge, representing the Montana Hospital Association, offered two pages of amendments for the Committee to review. He then took each one separately and reviewed it for the benefit of the Committee. See Exhibit 9.

Rose Skoogs, representing the Montana Health Care Association, stood in support of the bill. She offered a written amendment to the Committee for their review. It would insert into the bill on page 21, line 24. that "The department may adopt rules for the imposition of such conditions, but only if the secretary of the United States Department of Health and Human Services has approved an amendment to the state's medicaid plan adopted pursuant to 42 USC 1396a, allowing for the imposition of such conditions." Mrs. Skoogs stated that she would like to have a legal opinion raised from Washington D.S. See exhibit 10.

Judy Olson, representing the Montana Nurses Association, stood in support of the bill.

Jerome Loendorf, Montana Medical Association, stood in support of the bill.

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PUBLIC HEALTH
FEBRUARY 9, 1983

George Fenner, of the Department of Health, stood in support of the bill. He stated that the Committee now has the results of two months of negotiations and compromises in SB 293, such organizations as the Department of Health, the Montana Hospital Association, the Montana Nurses Association, the Montana Medical Association, the Department of SRS, the Governor's Office and the Montana Health Systems Agency have all cooperated on this project. All too often legislators are expected to balance the needs of conflicting interests. The Department was pleased to have contributed to the development of this compromise legislation and urge for its approval.

Dr. John Drynan, director of the Department of Health, stood in support of the bill.

Steve Browning, Montana Association of Homes for the Aged, stood in support of the Skoog amendment.

Doug Olson, representing the Montana Senior Citizens Advocacy, stood in support of the proposed amendment.

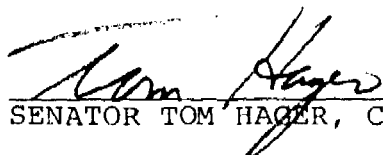
With no further proponents, the vice chairman called on the opponents. Hearing none, the meeting was opened to a question and answer period from the Committee.

All of the proposed amendments were discussed. John LaFavre stated that he did not like amendment #6 of the proposed amendments by Mr. Rutledge.

Senator Hager closed. He stated that this is a compromise bill and applauded the efforts of the all groups involved in working together. He asked the Committee for favorable consideration of the bill.

ANNOUNCEMENTS: The next meeting of the Public Health, Welfare and Safety Committee will be held on Friday, February 11, 1983 in Room 410 of the Capitol to consider SB 349 and SB 31.

ADJOURN: With no further business the meeting was adjourned.


SENATOR TOM HAGER, CHAIRMAN

PUBLIC HEALTH, WELFARE, SAFETY COMMITTEE

Date 2/9/8

[illegible]

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Adewale Ogun	IPSA			
Joyi Reeves	MT Health Systems Agency			
Paul Cady	" "	293		
Bob Speeding	" " " "	293	✓	
Thuy Min	MT SDHES	289	✓	
Jean Charles	_____	289	✓	
John T. ...	M. M. A.	289 293	✓	
Mary Ellen Halverson	MDA	289	✓	
Bill Rorive	wrecking yards	HB 96	✓	
Lindy Brown	MDA	HB 289	✓	
Lauri Salo	MDA	HB 289	✓	
Ruth Bagh	MDA	"	✓	
Beate Galda	Dept. of Highways	HB 96	✓	
LEE TICKELL	SRS	SB 293	✓	
John Larson	SRS	SB 293	✓	
Charles Gagner	SDHES	SB 293	✓	
George M. ...	SDAES	SB 293	✓	
Minkie Anderson	SB 289 MDA	SB 289	✓	
Steve ...	DHES	SB 293	✓	
John J. Olson	M. N. A.	293	✓	
Frank Davis	MT. ST. ... ASSN.	289	✓	
St. ...	MT. ... Assoc.	HB 289	✓	
Larry Mitchell	PHES	HB 96	✓	
John LaFaver	SRS	SB 293	✓	
Edward Lackin	Mont. Pub. Hlth. Assn	SB 293	✓	

(Please leave prepared statement with Secretary)

Ex 3
5029

Pierson, Ball & Doud
Client Memorandum

TO: American Health Care Association

DATE: February 3, 1983

RE: Validity of State Legislation Limiting
Certification of Medicaid Beds Through
Certificate Of Need Authority

You have requested our opinion as to the legality under federal law of legislation currently being proposed in Montana. This legislation would effectively authorize the state to place a limitation on the number of Medicaid-certified beds in long-term care facilities through use of the state's certificate of need authority. Under this proposal, the state would, under certain circumstances, be permitted to restrict the beds available for Medicaid beneficiaries. Ostensibly, the state would accomplish this through its certificate of need legislation and would not amend its Medicaid state plan, thereby attempting to circumvent the plan approval authority of the Secretary of the United States Department of Health and Human Services ("Secretary"). Montana's proposed legislation raises many of the same issues posed in several other states when authority was sought, through an amendment to the Medicaid state plan, to establish a cap on the number of Medicaid-certified beds.

Montana's proposed legislation and similar proposals pending in other states raise the following questions which are addressed in this memorandum: (1) whether a state that seeks to restrict Medicaid certification of long term care beds through its certificate of need authority must reflect this restriction in a Medicaid state plan amendment and, if not, whether such a restriction is still reviewable under Medicaid statutory and regulatory requirements; (2) whether, assuming the appropriateness of Medicaid reviewability, such a restriction conforms to Medicaid requirements (and who bears the burden of establishing conformity or lack of conformity); and (3) whether such a restriction, if either not reviewable under Medicaid requirements or in conformity with those requirements, violates federal health planning laws. In each section discussing these issues, we have summarized the legal arguments that would be relevant to resolution of these issues.

I. Reviewability Of The Proposed
Legislation Under Medicaid Requirements

Section 50-5-304(2) of the proposed Montana legislation provides in effect that, as to new long term care beds, the state department of social and rehabilitation services may restrict the number of Medicaid-certified beds by inserting a "certified bed" limitation in the facility's certificate of need if the department finds that an increase in certified

beds would produce increased Medicaid utilization for long term care facilities, causing the state to exceed its Medicaid budget. Under the proposed legislation, the availability of Medicaid funding could be the basis for imposing such a condition, but it could not be the sole basis for denying a certificate of need.

It may be argued that this proposal cannot become effective unless it is incorporated into and approved by the Secretary as part of the state's Medicaid plan. Under 45 C.F.R. § 205.5(a):

A State plan under title...XIX of the Social Security Act must provide that the plan will be amended whenever necessary to reflect...material change in any phase of State law, organization, policy or State agency operation.

Imposing a limitation on Medicaid-certified beds in long term care facilities arguably constitutes a "material change" in state law because of its potential effect on eligible Medicaid beneficiaries who may require nursing care but are precluded from receiving such care due to the unavailability of certified beds resulting from certificate of need limitations. Thus, the proposed law seems to represent a material change that must be reflected in the state plan as an amendment if the state wishes to continue participating in the Medicaid program. See also Kentucky Association of Health Care Facilities v. Department for Human Resources, No. 80-49 (E.D. Ky. Mar. 31, 1981), reported in CCH Medicare & Medicaid Guide

¶ 30,995 (1981-1 Transfer Binder) (where, although Court did not rule on merits, it suggested that there was probably a violation of federal law because of failure to submit Medicaid bed quota as Medicaid plan amendment for Secretary's approval).

In addition, under 42 U.S.C. § 1396c, the Secretary is empowered to review the operation and administration of Medicaid state plans to ensure that they comply with legal requirements. Thus, even if the Secretary did not review the proposed restriction as part of a Medicaid plan amendment, the Secretary could nevertheless use Medicaid requirements to evaluate that restriction as it affects the operation of the Medicaid plan. See also PIQ-MMB-77-5 (Aug. 18, 1977) at pp. 2-3 (in which the Secretary, in response to an inquiry concerning Medicaid certification limits, stated that the Medicaid program -- rather than certificate of need authorities -- is responsible for decisions concerning providers).

II. Limitations On Medicaid-Certified Beds May Be Illegal Under Medicaid Law

The restrictions on Medicaid-certified beds proposed under the Montana legislation and under similar legislative schemes in other states could conflict with Medicaid law and thus be illegal, regardless of whether they are properly introduced as an amendment to a state plan.^{*/} The applicable

^{*/} It should be noted that the Secretary has disapproved proposed amendments to the state plans of Mississippi and South Carolina where those amendments would have authorized the state to limit the number of Medicaid-certified beds. In each instance, the state requested a hearing as to the disapproval but ultimately withdrew the proposal. Kentucky proposed a similar limitation but withdrew it before the Secretary reviewed it. The legal arguments discussed in this section were the bases for the Secretary's actions in Mississippi and South Carolina.

Medicaid provisions that could invalidate this type of limiting legislation are summarized in this section of the memorandum.

A. The "Reasonable Promptness" Provision

Under § 1902(a)(8) of the Social Security Act, 42 U.S.C. § 1396a(a)(8), a state plan for medical assistance under the Medicaid program must provide:

that all individuals wishing to make application for medical assistance under the plan shall have opportunity to do so, and that such assistance shall be furnished with reasonable promptness to all eligible individuals; (Emphasis supplied.)

This statutory requirement that Medicaid beneficiaries be provided medical assistance with reasonable promptness suggests that any substantial delay in making requested medical assistance available to an eligible beneficiary is directly contrary to Medicaid law. A state statute authorizing a cap on Medicaid-certified beds might well produce a demand for beds from eligible Medicaid beneficiaries that exceeds the limited number of beds available to them. This excess demand would necessitate the creation of waiting lists for certified beds. If a state cannot make a bed available to an eligible beneficiary with reasonable promptness, the resulting delay would be contrary to Medicaid law.

B. Amount, Duration, And Scope Requirements

Under an applicable Medicaid regulation, 42 C.F.R. § 440.230,

each service that a state provides under its Medicaid program must be sufficient in amount, duration, and scope to achieve its purpose. Under this regulation:

- (c) The Medicaid agency may not arbitrarily deny or reduce the amount, duration, or scope of a required service...to an otherwise eligible recipient solely because of the diagnosis, type of illness, or condition.

Most states, including Montana, provide both skilled nursing and intermediate care in their Medicaid plans. Where they are part of a state's Medicaid plan, these services must be made available in sufficient amount, duration, and scope to achieve their purposes. If a medical determination is made that a particular beneficiary requires long term nursing care, but such care is not readily available because of state limitations on Medicaid-certified beds, the duration of that beneficiary's ultimate stay could be reduced substantially. Such a reduction in duration of a required Medicaid service would be arbitrarily applied to patients in need of long term care (as opposed to beneficiaries in need of other types of care or services) and, therefore, would be contrary to this Medicaid regulation.

C. Required Certification Absent Good Cause

In the Mississippi and South Carolina cases, the Secretary took the position that the Medicaid regulation governing provider agreements with certified facilities, 42 C.F.R.

§ 442.12(d), requires ^{in a s t} a State either to enter into a provider agreement for all certifiable beds in a facility or to decline to enter into a provider agreement at all. A state may refuse to enter into a provider agreement with a facility only for "good cause." According to the Secretary, "good cause" to refuse to enter into a provider agreement may be found under only three circumstances:

1. a facility fails to meet certification requirements (i.e., conditions or standards of program participation);
2. the facility is located in an "overbedded" area; or
3. the facility charges excessively high rates.

get this upon review from refuse certify facility Medicaid

A state's budgetary constraints, therefore, are not a recognized reason for refusing to certify a facility or its certifiable beds. Since Montana's proposal and similar pending legislation are tied to budgetary concerns, this is not sufficient reason to refuse to certify "certifiable" beds in a facility.

D. Burden Of Proof

In the Mississippi and South Carolina proceedings as well as in PIQ-MMB-77-5 (Aug. 18, 1977), the Secretary indicated that, in instances where the state imposes restrictions on Medicaid certification of beds, the state bears the burden of proving that these restrictions do not violate Medicaid requirements. This means that such restrictions will not be

approved unless the state first demonstrates through relevant data and evidence that the restrictions will not contravene the requirements that have previously been discussed.^{*/} Mere undocumented assertions by the state that the restrictions are not unlawful are not sufficient to obtain approval.

III. Legal Considerations Under Federal Health Planning Requirements

Assuming that proposed legislation like Montana's is either not subject to review under Medicaid requirements or is held to conform to those requirements, there is still substantial question whether it meets federal health planning requirements. Under these requirements, the state -- in deciding whether to issue certificates of need -- must consider the effect which its actions would have on the population's accessibility to health care and, in particular, the accessibility which traditionally underserved groups (including low income groups) would have to such care.

For example, in the Congressional findings contained in the National Health Planning and Development Act, Congress stated that there was an inadequate supply or distribution of health resources, that equal access for everyone to such

^{*/} In PIQ-MMB-77-5 (Aug. 18, 1977), the Secretary also suggested that the state would have to show as well that the restriction: (1) does not discriminate against patients requiring nursing care; (2) does not interfere with patients' freedom of choice of provider (see 42 U.S.C. §§ 1396a(a)(23) and 1396n); (3) does not violate the requirement that the plan be statewide in operation, including providing reasonable access on a geographic basis (42 U.S.C. § 1396a (a)(1)); and (4) does not discourage, by virtue of fee structures, enlistment of sufficient providers to assure that beneficiaries receive care at least to the extent it is available to the general population (42 C.F.R. § 447.204).

resources was not a reality, and that a maldistribution of health care facilities and manpower existed. 42 U.S.C. § 300k(a)(2) and (3)(B). Congress also specified that, in addition to any other regulatory criteria established by the Secretary, health systems agencies, state health planning and development agencies, and statewide health coordinating councils were to consider, among other things, the need that the population to be served has for the proposed services and the extent to which the proposed services would be accessible to all residents in the service area. 42 U.S.C. § 300n-1(c)(3) and (6)(E).

In the federal regulations governing state certificate of need laws like Montana's, the Secretary has enumerated a number of criteria which the states must consider when administering those laws. Although the states have flexibility to add additional criteria, those provisions may not be inconsistent with the Secretary's criteria. 42 C.F.R. § 123.402(a). Among the Secretary's criteria are the following considerations (42 C.F.R. § 123.412(a)(5)(i) and (6)):

the extent to which all residents of the area, and in particular low income persons, racial and ethnic minorities, handicapped persons, and other underserved groups and the elderly, are likely to have access to those services.

* * *

[t]he contribution of the proposed service in meeting the health related needs of members of medically underserved groups which have traditionally experienced difficulties in obtaining equal access to health services (for example, low income persons, racial and ethnic minorities, women and handicapped persons)....

Moreover, detailed findings as to access must be made. 42 C.F.R. § 123.413.

It may be argued that Montana's proposed legislation contravenes these requirements because it essentially compels the state to deny or delay low income persons (i.e., Medicaid beneficiaries) access to long term care in instances where there is ~~an~~ undeniable need for such care. Under federal law, the need for such care is supposed to be one of the factors employed when a certificate of need is issued. Montana's proposal, however, would require that where there is a finding of need, coupled with an impending budget crisis, access of certain groups to that care should be curtailed. In sum, is difficult to square Montana's proposal -- which would restrict access when there is a utilization need -- with federal laws seeking to assure access if there is a demonstrated need for care.^{*/}

^{*/} Montana may argue that its proposal does not prevent issuance of a certificate of need but merely imposes certain conditions on it. As to low income groups, however, a certificate of need which forbids or seriously limits Medicaid participation differs in no material respect from an outright denial of the certificate of need. Interestingly, a comparison of Montana's proposed certificate of need criteria (Section 5-5-304(1)(a)-(n), MCA) with the Secretary's regulatory criteria (42 C.F.R. § 123.412(a)(1)-(21)) shows that the proposal has, in fact, deleted much of the language concerning the access criterion.

IV. Summary

In the absence of detailed findings and evidence of which we are unaware, it is doubtful that Montana's proposed legislation complies, either on its face or as it would be applied in particular instances, with federal Medicaid and health planning requirements.

5B293
EX
5B2

I AM ADA WEEDING. MY HUSBAND AND I OPERATE A RANCH OUTSIDE
OF JORDAN, MONTANA.

I AM CHAIRMAN OF THE EASTERN MONTANA SUBAREA ADVISORY COUNCIL
AND A MEMBER OF THE GOVERNING BOARD OF THE MONTANA HEALTH SYSTEMS
AGENCY. I ALSO REPRESENT CONSUMER INTERESTS AS A MEMBER OF THE
GOVERNOR'S STATEWIDE HEALTH COORDINATING COUNCIL.

I THINK IT IS VERY IMPORTANT THAT, AS A CONSUMER, I HAVE SOME
INPUT AS TO THE HEALTH CARE SYSTEM IN THIS STATE, AND MORE
IMPORTANTLY, IN MY OWN LOCAL AREA.

THE CERTIFICATE OF NEED PROCESS AFFORDS THE OPPORTUNITY FOR
CONSUMERS TO PROVIDE NECESSARY TESTIMONY AND STATEMENTS WHICH
HELP DIRECT THE DECISION-MAKING PROCESSES REGARDING THE HEALTH
CARE SYSTEM AND DELIVERY OF SERVICES.

THANK YOU.

Exhibit 8

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES



TED SCHWINDEN, GOVERNOR

COGSWELL BUILDING

STATE OF MONTANA

HELENA, MONTANA 59620

January 27, 1983

TO: Senator Tom Hager

FROM: George M. Fenner
Administrator
Division of Health Services
and Medical Facilities

SUBJECT: Certificate of Need Legislation

Senate Bill 293 is an act to generally revise and clarify the laws relating to Certificate of Need for health care facilities. Revision of the Certificate of Need law was last made by the 46th Legislature in 1979. We all know there have been considerable changes in health care technology, health facility demands, and health care costs since 1979. For example, the most recent available Consumer Price Index (CPI) data shows that nationally costs of all goods and services have increased about 5 percent in the past year while costs for medical care have risen about 11 percent. There is no question that some of that health care increase has been brought about by advancements in diagnosis and treatment technology. A good part of what Certificate of Need is all about is to see that those sizeable financial investments in technology and new services are made in a fair and logical manner in Montana.

Certificate of Need provides a means of dealing with health care cost containment in Montana. The bill we have before us essentially conforms

with federal requirements but has been written to deal with problems and issues in Montana.

There are eight principal amendments proposed. They are:

1. A change in the thresholds for reviewability. The existing threshold is \$150,000 for any capital expenditure. The proposal is to amend that to \$500,000 for equipment acquisition and \$750,000 for facility construction.

Intent: To change the threshold so that greater emphasis can be placed on high cost projects.

Result: (a) Considerably fewer projects will be subject to review. In the past two years, many of these reviews had been conducted as abbreviated reviews and this change will eliminate their requirement for review. (b) Routine replacement of medical equipment (such as X-ray equipment) will likely fall below the threshold and not be subject to review.

2. The inclusion of review of major medical equipment exceeding the expenditure threshold regardless of the location of the equipment.

Intent: To include in review the acquisition of major medical equipment regardless of location.

Result: Acquisition of major medical equipment by health facilities is already subject to review. This provision will, in addition, include equipment acquisitions by clinics, private practitioners, or other organizations. Major medical equipment has an impact on all health care costs, both in the nature of their initial cost to purchase and operate, but particularly if it results in a duplication of existing services.

There are few major medical equipment purchases which take place outside of hospitals, but we wish to insure that those few are consistent with the public health care needs.

3. A new term and process brought into the law is "batching." The intent of "batching" is to outline the process whereby applicants with competing applications have an opportunity for a comparative review.

Intent: To provide a formal process where applicants with competing applications have a fair opportunity for comparative review.

Result: A formal process of comparative review will be set up by rule. In circumstances where the granting of a Certificate of Need to one applicant would substantially prejudice another, the comparative review that would result from batching gives each applicant a fair and equitable chance for approval.

4. The exclusion from review of non-medical and non-clinical facilities unrelated to the operation of the health care facility.

Intent: To exclude from review non-medical and non-clinical facilities unrelated to the operation of the health care facility.

Result: Capital expenditures by health care facilities for facilities and services unrelated to operation of the health care facility will not go through review. Examples could be physicians' office buildings or parking garages. The exclusions for non-medical facilities and state-owned facilities are contrary to federal requirements. In the event federal sanctions (loss of federal funds) are imposed, the Department would have the authority to adopt rules for Certificate of Need review of such facilities. However, any such rules would expire within two years of adoption unless ratified by the Legislature.

5. Exclude from review those state government health facilities approved through the long-range building program.

Intent: Exclude from review those projects of state government which have been approved by the Legislature through the long-range building program.

Result: Opportunity for consumer and provider input will have been offered through the legislative hearing process. This process should not be duplicated by Certificate of Need review.

6. The addition of authority to consider the availability of Medicaid funding in imposing conditions to a Certificate of Need for new long-term care beds.

Intent: To make clear the Department's authority to place conditions on Certificate of Need for long-term care beds when there may not be sufficient Medicaid funding to cover reimbursement for care provided in those beds.

Result: One possible result would be a Certificate of Need approval with the condition that the new beds would not be certified for Medicaid until such time as they were included in Medicaid appropriations.

7. Some general reduction in the length of time to request and hold appeals hearings plus an opportunity for the requestor of an appeals hearing to bypass the reconsideration hearing and proceed directly with the appeal to the Board of Health.

Intent: The intent of this amendment is to generally streamline the review and appellate process.

Result: This amendment will result in a reduction in the length of time to request and hold appeals hearings. Also, by allowing an affected party to bypass the reconsideration hearing and proceed directly to a hearing before the Board, considerable time in the appeals process could be saved.

8. Mandatory approval of expenditures necessary to eliminate safety hazards or to comply with licensure requirements.

Intent: To assure Certificate of Need approval for projects necessary to eliminate safety hazards or comply with licensure requirements.

Result: If the facility in which such corrections are proposed is found to be needed, the expenditures must be approved and a Certificate of Need must be issued.

There are numerous other amendments which appear throughout SB 293 which essentially are a reorganization of current provisions into a more logical format. Specifics of all these amendments were worked out in a series of meetings held between Department of Health staff, the Montana Hospital Association, the Montana Medical Association, the Montana Health Care Association, the Montana Nurses Association, and the Montana Health Systems Agency.

To answer specific questions you might have, there are present staff of the Department of Health.

SENATE BILL 293 HEARING
BEFORE THE SENATE PUBLIC HEALTH COMMITTEE
FEBRUARY 9, 1983
12:30 P.M. - ROOM 410

COMMITTEE MEMBERS

TOM HAGER, CHAIRMAN

A. REED MARBUT

MATT HIMSL

STAN STEPHENS

B.F. CHRIS CHRISTIAENS

JUDY H. JACOBSON

BILL NORMAN

- INTRODUCTION - STEVEN PERLMUTTER, ATTORNEY, DEPARTMENT OF HEALTH
AND ENVIRONMENTAL SCIENCES
- TESTIMONY - JOHN LA FAVER OR LEE TICKELL, DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES
- ADA WEEDING, CHAIRMAN, EASTERN SUBAREA ADVISORY
COUNCIL; MEMBER MONTANA HEALTH SYSTEMS AGENCY
GOVERNING BOARD; MEMBER STATEWIDE HEALTH COOR-
DINATING COUNCIL
- KEN RUTLEDGE, VICE PRESIDENT, MONTANA HOSPITAL
ASSOCIATION
- ROSE SKOOG, EXECUTIVE DIRECTOR, MONTANA HEALTH CARE
ASSOCIATION
- JUDY OLSON OR SHIRLEY THENNIS, MONTANA NURSES'
ASSOCIATION
- JERRY LÖENDORF, ATTORNEY, MONTANA MEDICAL ASSOCIATION
- GEORGE FENNER, ADMINISTRATOR, DIVISION OF HEALTH
SERVICES AND MEDICAL FACILITIES, DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES

(This sheet to be used by those testifying on a bill.)

BEST COPY
AVAILABLE

NAME: Steve Reinutter DATE: 2/1/83

ADDRESS: 1021 3rd Ave. Holmdel, NJ

PHONE: 408-2630

REPRESENTING WHOM? Dept. Health & Senior Svcs

APPEARING ON WHICH PROPOSAL: 30230

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: JOHN LAFAVER DATE: 2/9/83

ADDRESS: 8805 DOUGLAS CR HELENA

PHONE: 458-9618 - 449-5672

REPRESENTING WHOM? SRS

APPEARING ON WHICH PROPOSAL: SB 293

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENTS: The bill is essential to allow the
department of SRS to control Medicaid
costs. The Medicaid program will spend
\$ 200 million next biennium. Because of its
magnitude, cost control is essential for the
state's continued financial viability.

The bill will assure that the number
of nursing home beds remains consistent with
the number allowed and funded during
the legislative process.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

I AM ADA WEEDING, MY HUSBAND AND I OPERATE A RANCH OUTSIDE
OF JORDAN, MONTANA.

I AM CHAIRMAN OF THE EASTERN MONTANA SUBAREA ADVISORY COUNCIL
AND A MEMBER OF THE GOVERNING BOARD OF THE MONTANA HEALTH SYSTEMS
AGENCY. I ALSO REPRESENT CONSUMER INTERESTS AS A MEMBER OF THE
GOVERNOR'S STATEWIDE HEALTH COORDINATING COUNCIL.

I THINK IT IS VERY IMPORTANT THAT, AS A CONSUMER, I HAVE SOME
INPUT AS TO THE HEALTH CARE SYSTEM IN THIS STATE, AND MORE
IMPORTANTLY, IN MY OWN LOCAL AREA.

THE CERTIFICATE OF NEED PROCESS AFFORDS THE OPPORTUNITY FOR
CONSUMERS TO PROVIDE NECESSARY TESTIMONY AND STATEMENTS WHICH
HELP DIRECT THE DECISION-MAKING PROCESSES REGARDING THE HEALTH
CARE SYSTEM AND DELIVERY OF SERVICES.

THANK YOU.

10/2/82

SENATE BILL NO. 293
(MHA Proposed Amendments)

MR. CHAIRMAN:

I move to amend Senate Bill No. 293 as follows:

1. On pages 7 and 8, definition of "major medical equipment" amended to read:

"(27) "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions which is used to provide medical or other health services."

2. On page 12, subsection (1)(d) amended to read:

"(d) the acquisition by any person of major medical equipment, provided such acquisition would have required a certificate of need pursuant to subsection (1)(a) or (1)(c) of this section if it had been made by or on behalf of a health care facility."

3. On page 16, subsection (1)(e) by deleting the following:

"expansion of existing services,".

4. On page 17, subsection (4), lines 8 through "additional information" on line 13 by substituting in lieu thereof:

"(4) Within 15 calendar days after receipt of the application, the department shall determine whether it is complete. If the application is found incomplete, the department shall request the necessary additional information within 5 ~~working~~ days. Upon receipt of the additional information from the applicant, the department shall have 15 days to determine if the application is complete. If the department fails to make a determination as to the completeness of the application within the prescribed 15 day period, the application shall be deemed to be complete."

5. On page 18, subsection (6), by adding the following:

"(6) The department shall, after considering all comments received during the review period, issue a certificate of need, with or without conditions, or reject deny the application. The department shall notify the applicant of its decision within 5 working days after termination of the review period. /If the department fails to make a decision and notify the applicant of its decision by the end of the review period, the application shall be deemed to have been approved."

6. On page 12, subsection 1(c) by striking \$50,000 on line 23 and replacing it with \$100,000.

7. On page 17, by adding the following subsections to Section 13:

"(3) On July 1, 1987, Sections 50-5-301 through 50-5-308, MCA, and Section 8, Section 9 and Section 10 hereof, are repealed unless reenacted by the legislature.

(4) On July 1, 1987, Section 50-5-101, MCA is amended by deleting subsections (3), (5), (6), (8), (9), (10), (13), (14) and (27) unless reenacted by the legislature.

(5) On July 1, 1987, Section 50-5-106, MCA is amended to read as follows, unless reenacted by the legislature:

"50-5-106. Records and reports required of health care facilities - confidentiality. Health care facilities shall keep records and make reports as required by the department. Before February 1 of each year, every licensed health care facility shall submit an annual report for the preceding calendar year to the department. The report shall be on forms and contain information specified by the department. Information received by the department or board through reports, inspections, or provisions of parts 1 and 2 may not be disclosed in a way which would identify patients. A department employee who discloses information which would identify a patient shall be dismissed from employment and subject to the provision of 45-7-401, unless the disclosure was authorized in writing by the patient, his guardian, or his agent. Information and statistical reports from health care facilities which are considered necessary by the department for health planning and resource development activities will be made available to the public and the health planning agencies within the state. Applications-by-health-care-facilities-for-certificates-of-need and-any-information-relevant-to-review-of-these-applications, pursuant-to-part-3, shall-be-accessible-to-the-public."

(6) On July 1, 1987, Section 50-5-206, MCA is amended to delete subsection (3), which provides:

"(3)-The-denial,-suspension,-or-revocation-of-a-health-care facility-license-is-not-subject-to-the-certificate-of-need requirements-of-part-3."

AMENDMENT TO SB-293

Page 21, line 24.

Following: "need."

Insert: "The department may adopt rules for the imposition of such conditions, but only if the secretary of the United States department of health and human services has approved an amendment to the state's medicaid plan, adopted pursuant to 42 USC 1396a, allowing for the imposition of such conditions."

(This sheet to be used by those testifying on a bill.)

NAME: George M. Lerner DATE: 2-9-83

ADDRESS: 2201 Lockey Ave Helena Mt.

PHONE: 442-4844 449-2037

REPRESENTING WHOM? Dept of Health + Env Sci

APPEARING ON WHICH PROPOSAL: SB 293

DO YOU: SUPPORT? ✓ AMEND? --- OPPOSE? ---

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

TESTIMONY BY GEORGE M. FENNER ON SENATE BILL 293 - February 9, 1983

THIS COMMITTEE NOW HAS THE RESULTS OF TWO (2) MONTHS OF
NEGOTIATIONS AND COMPROMISES IN SENATE BILL 293. SUCH
ORGANIZATIONS AS THE DEPARTMENT OF HEALTH, THE MONTANA HOSPITAL
ASSOCIATION, THE MONTANA NURSES ASSOCIATION, THE MONTANA MEDICAL
ASSOCIATION, THE DEPARTMENT OF SOCIAL AND REHABILITATION
SERVICES, THE GOVERNOR'S OFFICE AND THE MONTANA HEALTH SYSTEMS
AGENCY HAVE ALL COOPERATED ON THIS PROJECT.

ALL TOO OFTEN LEGISLATORS ARE EXPECTED TO BALANCE THE NEEDS
OF CONFLICTING INTERESTS. WE ARE PLEASED TO HAVE CONTRIBUTED
TO THE DEVELOPMENT OF THIS COMPROMISE LEGISLATION AND WE URGE
ITS APPROVAL BY THIS COMMITTEE.

THANK YOU VERY MUCH.

*effort
on
compromise bill*

Testimony of Wade Wilkison

LOW INCOME SENIOR CITIZENS ASSOCIATION, Helena

SENATE BILL 293

The Low Income Senior Citizens Association is concerned about Section 2, page 2, of this legislation.

This provision has the potential of limiting access by low income seniors to needed health care. This provision would allow low income, medicaid eligible citizens who need long term care to be denied access to that care because needed beds will not be approved for medicaid certification.

Once beds are determined to be in fact "needed" according to the State Health Plan and the certificate of need process, those beds should be equally available to those needing them--whether those needing them are medicaid recipients or private paying individuals.

We feel this provision is contrary to both Health Planning requirements--which require access to health care for traditionally underserved populations (such as low income persons), and Federal medical requirements which prohibit denying access to covered services strictly on the basis of budget considerations.

We support the amendment offered by the Montana Health Care Association, and urge your consideration and approval of this amendment.

Thank you for the opportunity to testify.

STATEMENT OF INTENT

Senate Bill No. 243 [LC 1071]

A statement of intent is required for this bill because it delegates rulemaking authority to the Department of Health and Environmental Sciences. This bill generally revises Montana's Certificate of Need program for review of health care facilities. This program is conducted by the Department under the provisions of Title 50, Chapter 5, part 3. With limited exceptions, the specific intent of this bill is to clarify the Department's authority to bring the state's Certificate of Need program into compliance with the minimum standards of the National Health Planning and Resources Development Act (42 USC 300K, et. seq.), as amended, and with the provisions of 42 CFR 123.401 through 123.413.

The Department has already been granted general rulemaking authority for the implementation of a Certificate of Need (C/N) program which complies with federal requirements. (See the statement of intent adopted with Ch. 347, L. 1979.) It is intended that the general rulemaking authority presently existing in 50-5-103(1), be extended to the provisions of this bill.

In some instances, however, the statutory authority to implement specific aspects of the federal requirements was not clear. It is the intent of this bill to make that authority clear in the following areas: establishment of "batching periods" for comparative review of competing applications; joint scheduling of C/N reviews; and review of acquisition of major medical equipment and health care facilities. It is the intent of the Legislature that the Department's rules be designed to comply with the provisions of 42 CFR 123.401 through 123.413.

Other rulemaking mentioned in this bill includes:

Section. 2: 50-5-301(2)(b): Exemptions for Health Maintenance Organizations (HMOs). The intent is to provide such exemptions as may be necessary to comply with 42 USC 300k et seq., as amended.

50-5-301(5)(b): Thresholds for review. The intent is to allow the Department to raise review thresholds if necessary to remain in compliance with federal law and to continue to receive federal health planning grants.

Section 3: 50-5-302(1): The rulemaking authority mentioned here simply clarifies specific aspects of the authority already granted pursuant to 50-5-103(1).

Section 9: Subsection (1) of section 9 excludes certain categories of expenditures from C/N review. These exclusions are not consistent with current federal requirements. However, at present the federal government has waived imposition of sanctions (loss of federal funds) for noncompliance with federal requirements. In the event those sanctions are ever imposed, subsection (2) of section 9 authorizes the Department to adopt rules providing for review of those excluded categories. Any such rules must be ratified by the next Legislature meeting after adoption of the rules.

MINUTES OF THE MEETING
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE
MONTANA STATE SENATE

FEBRUARY 16, 1983

The meeting of the Public Health, Welfare and Safety Committee was called to order by Chairman Tom Hager on Wednesday, February 16, 1983 in Room 410 of the State Capitol Building.

ROLL CALL: All members were present. Woody Wright, staff attorney was also present.

Many visitors were also in attendance.

CONSIDERATION OF SENATE BILL 404: Senator Stan Stephens, chief sponsor of Senate Bill 404, from Senate District 4, gave a brief resume of the bill.

This bill is an act for the designation of area agencies for senior citizens. Senator Stephens stated that this bill is a reinstatement of services in certain areas for senior citizens. Senior Citizens are a very proud group of people. They are concerned that these services not be called "welfare". The main part of the bill on page 1, line 19, subsection (b). It states that these services may be handled from an office or agency of a unit of general purpose local government, except a county welfare office or department.

There were neither any proponents or opponents to the bill.

The meeting was opened to a question and answer period from the Committee.

Senator Christiaens asked if this is always handled by the county. Some counties deal directly with the state office.

Senator Marbut stated that did not like the language on page 1, line 16, "but not limited to". He asked Senator Stephens if he had any problem with striking that out of the bill. Senator Stephens stated that he had no problem with striking that language.

Senator Stephens closed.

CONSIDERATION OF SENATE BILL 410: Senator Mike Halligan of Senate District 48, sponsor of Senate Bill 410, gave a brief resume of the bill.

PUBLIC HEALTH
PAGE FOUR
FEBRUARY 16, 1983

Senator Smith stated that the Department of Institutions and the Department of Social and Rehabilitation Services need this bill in order to have a "professional" person testify at a hearing to have someone readmitted to an institution. This bill would not require any more staff for the departments. It would allow SRS to certify quality persons to appear before the courts. A hearing is required in order to get both out of an institution and back into an institution.

Joe Roberts stated that this bill is very much needed for professional persons to testify at the hearing. Coordination is needed between the departments.

Judy Carlson stated that this is just for certification for court hearings. At the present law they have been trying to carry out the existing law, however, it is not satisfactory.

Joe Roberts stated that the need for this bill came out of a statement from the attorney for the Code Commissioner, he stated that SRS and the Department of Institutions do not have the authority to do this at the present time. This bill would clarify the rulemaking authority.

Senator Himsl asked if doctors are automatically termed as "professional people". Mr. Roberts stated that they are.

Senator Himsl stated that page 4 of the bill appears to try to take standards which other people have adopted.

DISPOSITION OF SENATE BILL 395: A motion was made by Senator Jacobson that Senate Bill 395 receive a DO PASS recommendation from the Committee. Motion carried with everyone voting "yes" with the exceptions of Senators Stephens and Himsl.

DISCUSSION ON SENATE BILL 293: Senate Bill 293 is an act to generally revise and clarify the laws relating to certificates of need for health care facilities; and providing an immediate effective date.

Amendments were handed out to the Committee from the Montana Hospital Association. These were briefly explained by the staff attorney.

Ken Rutledge, representing the Montana Hospital Association, stated that these amendments are to keep from a duplication of services. This bill would effect doctors and clinics and others in the free enterprise system.

PUBLIC HEALTH
PAGE FIVE
FEBRUARY 16, 1983

Senator Himsl State that page 12 of the bill appears to be a manipulation.

Mr. Rutledge explained amendments three through six.

The Department of Social and Rehabilitation Services does not like amendment number 6.

An amendment is needed for a sunset provision in the bill, so that the legislature will be able to review this law at the next legislature.

A motion was made by Senator Norman that the proposed amendments with the inclusion of the sunset study be adopted by the Committee. Motion carried unanimously.

Senator Hager asked that the bill be held until the next Committee meeting for the action on the bill and the statement of intent.

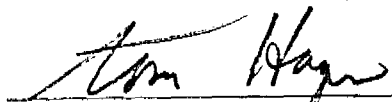
DISPOSITION OF SENATE BILL 404: A motion was made by Senator Christiaens that Senate Bill 404 receive a DO PASS recommendation from the Committee. Motion carried with everyone present voting "yes" with the exception of Senator Himsl, who voted "no".

SENATE BILL 274:

Proposed amendments, copies of HB 284 and HB 782 were handed out to the Committee to be studied until the next meeting.

ANNOUNCEMENTS: The next meeting of the Public Health, Welfare and Safety Committee will be held on Friday, February 18, 1983 in Room 410 of the State Capitol Building to hear SB 418, SB 439, SB 446, and SB 447.

ADJOURN: With no further business the meeting was adjourned.


CHAIRMAN TOM HAGER

ROLL CALL

PUBLIC HEALTH, WELFARE, SAFETY COMMITTEE

48th LEGISLATIVE SESSION -- 1983

Date 2/16/

[illegible]

AMENDMENTS TO SB-293
(Proposed by Montana Hospital Association)

1. Page 7, line 25
Following: "services"
Insert: "."
Delete: rest of line 25

Page 8:
Delete lines 1 through 8 in their entirety
2. Page 12, line 25
Following: "equipment"
Delete: the rest of line 25
Insert: ", provided such acquisition would have
required a certificate of need pursuant to
subsection (1)(a) or (1)(c) of this section if
it had been made by or on behalf of a health
care facility."
Page 13
Delete: lines 1 through 7 in their entirety
3. Page 16, line 11
Following: "services,"
Delete: "expansion of existing services,"
4. Page 17, line 11
Following: "If"
Insert: ", after the 15 days,"

Page 17, line 13
Following: "information"
Insert: "within 5 working days. Upon receipt of the
additional information from the application, the
department shall have 15 days to determine if the
application is complete. If the department fails
to make a determination as to the completeness of
the application within the prescribed 15 day period,
the application shall be deemed to be complete."
5. Page 18, line 17
Following: "period."
Insert: "If the department fails to reach a decision
and notify the applicant of its decision within
the deadlines established in this section, and if
that delay constitutes an abuse of the department's
discretion, the applicant may apply to district
court for a writ of mandamus to force the department
to render a decision."
6. Page 12, line 23
Following: "of"
Strike: "\$50,000"
Insert: "\$100,000"

MINUTES OF THE MEETING
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE
MONTANA STATE SENATE

FEBRUARY 18, 1983

The meeting of the Public Health, Welfare and Safety Committee was called to order on Friday, February 18, 1983 in Room 410 of the State Capitol Building by Chairman Tom Hager.

ROLL CALL: All members were present. Woody Wright, staff attorney, was also present.

Many visitors were also in attendance.

CONSIDERATION OF SENATE BILL 418: Senator Judy Jacobson of Senate District 42, the chief sponsor of Senate Bill 418, gave a brief resume of the bill. This bill is an act repealing administrative rules of the Department of Social and Rehabilitation Services implementing the chronic or end-stage renal disease treatment program and clarifying existing rulemaking authority for those rules, and providing an immediate effective date.

Senator Jacobson stated that this money to fund the program comes from the general fund. At the present time SRS is using life insurance as a criteria for resources. SRS rules are too inflexible to handle the program effectively.

Representative Nancy Keenan of District 89, spoke in support of the bill. Miss Keenan stated that there seems to be a lack of communication between the SRS and the patients in the program. The patients have come almost a full year without assistance. She then gave the history of the previous program.

Richard A. Norick of Missoula, himself a kidney patient, told of his own personal experiences. Many, many kidney patients try to use home dialysis because of the cost in the hospitals. Mr. Norick presented a letter to the Committee which he had written to Representative John M. Shontz. See exhibit 1.

Dr. Sidney Pratt of the Department of Health stood in support of the bill. He stated that if the Department of SRS were amended out of the bill and the Department of Health amended into the bill would be an improvement. He stated that the Department of Health is already handling three similar programs of this type. 1) Cleft palate; 2) Handicapped children; and 3) Improved pregnancy program.

PAGE SIX
PUBLIC HEALTH
FEBRUARY 18, 1983

A motion was made by Senator Norman that SB 447 receive a DO PASS as amended recommendation from the Committee. Motion carried unanimously.

DISPOSITION OF SENATE BILL 410: Senate Bill 410 , which was sponsored by Senator Halligan, is an act to generally revise and clarify the laws relating to licensure of cesspool, septic tank, and privy cleaning businesses; allowing the Department of Health and Environmental Sciences to establish requirements by rule for disposal sites and increasing the license fee; providing for a hearing after the denial, suspension, or revocation of a license; providing for exceptions to the licensing requirements; and providing for civil and criminal penalties.

A motion was made by Senator Marbut that the bill be amended on page 2, line 22, strike: "but not limited to" . Motion carried.

A motion was made by Senator Marbut that the bill be amended on page 6, lines 12 through 14. This would strike the penalty clause. Motion carried.

Senator Hager stated that four years ago he had carried a bill which was very similar to this, and there still seems to be some problems.

A motion was made by Senator Norman that SB 410 receive a DO PASS as amended recommendation from the Committee. A roll call vote was taken. Motion carried. See attachments.

A motion was made by Senator Hims1 that the statement of intent for Senate Bill 410 be adopted. Motion carried.

DISPOSITION OF SENATE BILL 31: A motion was made by Judy Jacobson that Senate Bill 31 be tabled at the request of the sponsor. Motion carried.

DISPOSITION OF SENATE BILL 293: Senator Tom Hager is the chief sponsor of SB 293 which is an act to generally revise and clarify the laws relating to certificates of need for health care facilities, and providing an immediate effective date.

PUBLIC HEALTH
PAGE SEVEN
FEBRUARY 18, 1983

The amendments to Senate Bill 293 were adopted at the meeting of February 16, 1983.

Senator Hims1 brought up the question of the amendment presented by Mrs. Rose Skoog, representative for the Montana Health Care Association. Senator Hims1 made a motion that the bill be amended on page 21, line 24; following: "need"; Insert: "The department may adopt rules for the imposition of such conditions, but only if the secretary of the United States department of health and human services has approved an amendment to the state's medicaid plan, adopted pursuant to 42-USC-1396a, allowing for the imposition of such conditions."

Senator Jacobson stated that she called the Health Care Finance Administrator at the federal office in Denver. However, there seems to be some controversy in what they are telling. They have told several different versions as to what are their views on the proposed amendment suggested by Mrs. Skoogs in regards to the medicaid plan.

A vote was taken on the Skoog amendments. Motion carried.

A motion was made by Senator Hager that Senate Bill 293 receive a DO PASS as amended recommendation from the Committee. Motion carried.

Senator Norman stated that this bill must meet the federal requirements. Senator Hager will write a letter requesting a formal reaction to the Health Care Finance Administrator in Denver before the hearing on SB 293 in the House.

DISPOSITION OF SENATE BILL 274: Senator Dover is the chief sponsor of Senate Bill 274 which is an act providing for the mandatory licensing and regulation of professional counselors; creating a state board of licensed professional counselors; creating a communications privilege; providing penalties for violations; and allowing disability and health insurance coverage for work done by licensed professional counselors.

Amendments were handed out to the Committee which are the amendments requested by the counselors and also Senator Dover. The amendments would tighten up the law.

ROLL CALL

PUBLIC HEALTH, WELFARE, SAFETY COMMITTEE

48th LEGISLATIVE SESSION -- 1983

Date 2/10

[illegible]

Agreed

AMENDMENTS TO SB-293
(Proposed by Montana Hospital Association)

- x1. Page 7, line 25
Following: "services"
Insert: "."
Delete: rest of line 25

Page 8:
Delete lines 1 through 8 in their entirety

- x2. Page 12, line 25
Following: "equipment"
Delete: the rest of line 25
Insert: ", provided such acquisition would have required a certificate of need pursuant to subsection (1)(a) or (1)(c) of this section if it had been made by or on behalf of a health care facility."

Page 13
Delete: lines 1 through 7 in their entirety

- x3. Page 16, line 11
Following: "services,"
Delete: "expansion of existing services,"

- x4. Page 17, line 11
Following: "If"
Insert: ", after the 15 days,"

Page 17, line 13
Following: "information"
Insert: "within 5 working days. Upon receipt of the additional information from the application, the department shall have 15 days to determine if the application is complete. If the department fails to make a determination as to the completeness of the application within the prescribed 15 day period, the application shall be deemed to be complete."

- x5. Page 18, line 17
Following: "period."
Insert: "If the department fails to reach a decision and notify the applicant of its decision within the deadlines established in this section, and if that delay constitutes an abuse of the department's discretion, the applicant may apply to district court for a writ of mandamus to force the department to render a decision."

- x6. Page 12, line 23
Following: "of"
Strike: "\$50,000"
Insert: "\$100,000"

SENATE BILL NO. 293
(MHA Proposed Amendments)

MR. CHAIRMAN:

I move to amend Senate Bill No. 293 as follows:

1. On pages 7 and 8, definition of "major medical equipment" amended to read:

"(27) "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions which is used to provide medical or other health services."

2. On page 12, subsection (1)(d) amended to read:

"(d) the acquisition by any person of major medical equipment, provided such acquisition would have required a certificate of need pursuant to subsection (1)(a) or (1)(c) of this section if it had been made by or on behalf of a health care facility."

3. On page 16, subsection (1)(e) by deleting the following:

"expansion of existing services,".

4. On page 17, subsection (4), lines 8 through "additional information" on line 13 by substituting in lieu thereof:

After 15 days
"(4) Within 15 calendar days after receipt of the application, the department shall determine whether it is complete. If the application is found incomplete, the department shall request the necessary additional information within 5 calendar days. Upon receipt of the additional information from the applicant, the department shall have 15 days to determine if the application is complete. If the department fails to make a determination as to the completeness of the application within the prescribed 15 day period, the application shall be deemed to be complete."

5. On page 18, subsection (6), by adding the following:

"(6) The department shall, after considering all comments received during the review period, issue a certificate of need, with or without conditions, or reject deny the application. The department shall notify the applicant of its decision within 5 working days after termination of the review period. If the department fails to make a decision and notify the applicant of its decision by the end of the review period, the application shall be deemed to have been approved."

6. On page 12, subsection 1(c) by striking \$50,000 on line 23 and replacing it with \$100,000.

7. On page 17, by adding the following subsections to Section 13:

"(3) On July 1, 1987, Sections 50-5-301 through 50-5-308, MCA, and Section 8, Section 9 and Section 10 hereof, are repealed unless reenacted by the legislature.

(4) On July 1, 1987, Section 50-5-101, MCA is amended by deleting subsections (3), (5), (6), (8), (9), (10), (13), (14) and (27) unless reenacted by the legislature.

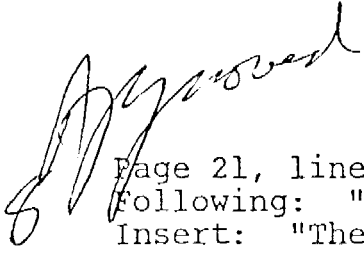
(5) On July 1, 1987, Section 50-5-106, MCA is amended to read as follows, unless reenacted by the legislature:

"50-5-106. Records and reports required of health care facilities - confidentiality. Health care facilities shall keep records and make reports as required by the department. Before February 1 of each year, every licensed health care facility shall submit an annual report for the preceding calendar year to the department. The report shall be on forms and contain information specified by the department. Information received by the department or board through reports, inspections, or provisions of parts 1 and 2 may not be disclosed in a way which would identify patients. A department employee who discloses information which would identify a patient shall be dismissed from employment and subject to the provision of 45-7-401, unless the disclosure was authorized in writing by the patient, his guardian, or his agent. Information and statistical reports from health care facilities which are considered necessary by the department for health planning and resource development activities will be made available to the public and the health planning agencies within the state. Applications-by-health-care-facilities-for-certificates-of-need and-any-information-relevant-to-review-of-these-applications, pursuant-to-part-3,-shall-be-accessible-to-the-public."

(6) On July 1, 1987, Section 50-5-206, MCA is amended to delete subsection (3), which provides:

"(3)-The-denial,-suspension,-or-revocation-of-a-health-care facility-license-is-not-subject-to-the-certificate-of-need requirements-of-part-3."

AMENDMENT TO SB-293

Page 21, line 24.

Following: "need."

Insert: "The department may adopt rules for the imposition of such conditions, but only if the secretary of the United States department of health and human services has approved an amendment to the state's medicaid plan, adopted pursuant to 42 USC 1396a, allowing for the imposition of such conditions."

STANDING COMMITTEE REPORT

.....FEBRUARY 12,..... 19 33.....

MR.PRESIDENT:.....

We, your committee onPUBLIC HEALTH, WELFARE AND SAFETY.....

having had under considerationSENATE..... Bill No. 293,.....

Respectfully report as follows: That.....SENATE..... Bill No. 293.....
introduced copy, be amended as follows:

1. Title, line 11.

Following: "DATE"

Insert: "AND DELAYED EFFECTIVE DATES"

2. Page 7, line 25.

Following: "services"

Strike: remainder of line 25 through "act" on line 8, page 8.

3. Page 12, line 25.

Following: "equipment"

Strike: remainder of line 25 through "value." on line 7, page 13.

Insert: ", provided such acquisition would have required a
certificate of need pursuant to subsection (1)(a) or (1)(c) of
this section if it had been made by or on behalf of a health
care facility."

DDX:PASSK

.....CONTINUED.....

4. Page 16, line 11.

Following: "services,"

Strike: "expansion of existing services,"

5. Page 17, line 11.

Following: "If"

Insert: ", after the 15 days,"

6. Page 17, line 13.

Following: "information"

Insert: "within 5 working days. Upon receipt of the additional information from the application, the department shall have 15 days to determine if the application is complete. If the department fails to make a determination as to the completeness of the application within the prescribed 15 day period, the application shall be deemed to be complete."

7. Page 18, line 17.

Following: "period."

Insert: "If the department fails to reach a decision and notify the applicant of its decision within the deadlines established in this section, and if that delay constitutes an abuse of the department's discretion, the applicant may apply to district court for a writ of mandamus to force the department to render a decision."

8. Page 12, line 23.

Following: "of"

Strike: "\$50,000"

Insert: "\$100,000"

9. Page 21, line 24.

Following: "need."

Insert: "The department may adopt rules for the imposition of such conditions, but only if the secretary of the United States department of health and human services has approved an amendment to the state's medicaid plan, adopted pursuant to 42 USC 1396a, allowing for the imposition of such conditions."

10. Page 29, line 13.

Strike: "date"

Insert: "dates"

CONTINUED

Handwritten signature

11. Page 29, line 14.

Following: "Approval"

Insert: "with delayed effective dates"

Following: "."

Insert: "On July 1, 1987, Sections 50-5-301, 50-5-302, 50-5-304 through 50-5-308, MCA, and Section 8, Section 9 and Section 10 hereof, are repealed unless reenacted by the legislature.

(3) On July 1, 1987, Section 50-5-101, MCA, is amended by deleting subsections (3), (5), (6), (8), (9), (10), (13), (14), and (27) unless reenacted by the legislature.

(4) On July 1, 1987, Section 50-5-106, MCA, is amended to read as follows, unless reenacted by the legislature:

"50-5-106. Records and reports required of health care facilities - confidentially. Health care facilities shall keep records and make reports as required by the department. Before February 1 of each year, every licensed health care facility shall submit an annual report for the preceding calendar year to the department. The report shall be on forms and contain information specified by the department. Information received by the department or board through reports, inspections, or provisions of parts 1 and 2 may not be disclosed in an way which would identify patients. A department employee who discloses information which would identify a patient shall be dismissed from employment and subject to the provision of 45-7-401, unless the disclosure was authorized in writing by the patient, his guardian, or his agent. Information and statistical reports from health care facilities which are considered necessary by the department for health planning and resource development activities will be made available to the public and the health planning agencies within the state. Applications-by-health-care-facilities-for-certificates-of-need-and-any-information-relevant-to-review-of-these-applications,--pursuant-to-part-3, shall-be-accessible-to-the-public."

And, as so amended,

DO PASS

4

STATUS SHEET

HUMAN SERVICES

COMMITTEE

48th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
3 214	AUTHORIZING DEPT INSTITUTIONS AND DEPT SRS TO CERTIFY MENTAL HEALTH PROFESSIONALS; GRANTING RULEMAKING AUTHORITY	3/1	SMITH	3-21	AND AS AMENDED BE CONCURRED IN	3-23
3 256	REVISING UNIFORM ANATOMICAL GIFT ACT, BROADENING DEFINITION OF "BANK OR STORAGE FACILITIES"; REMOVING LIABILITY FOR ACTIONS IN GOOD FAITH, ESTABLISHING QUALIFICATIONS FOR PERSONS PERFORMING EYE ENUCLEATION SERVICES	3/1	MARBUT	3-23	BE CONCURRED IN	3-23
3 289	ESTABLISHING QUALIFICATIONS FOR DIETITIANS OR REGISTERED DIETICIANS; PROHIBIT THOSE NOT MEETING FROM REPRESENTING THEMSELVES AS SUCH; PENALTY	3/1	NORMAN	3-23	AND AS AMENDED BE CONCURRED IN	3-23
3 293	GENERALLY REVISE AND CLARIFY LAWS RELATING TO CERTIFICATES OF NEED FOR HEALTH CARE FACILITIES	2/28	HAGER	3-11	BE CONCURRED IN	3-14
3 324	CREATING MONTANA YOUTH TREATMENT CENTER FOR CARE OF MENTALLY ILL 12-18 YEARS OLD	3/1	TOWE	3-21	BE CONCURRED IN	3-21

MINUTES OF THE MEETING OF THE HUMAN SERVICES COMMITTEE
March 11, 1983

The meeting of the Human Services Committee held Friday, March 11, 1983, 12:30 p.m. in Room 224A of the Capitol Building was called to order by Chairman Marjorie Hart. All members were present except Reps. Seifert and Solberg, who were absent, and Rep. Brand, who was excused.

SENATE BILL 209

SEN. DOVER, sponsor. This bill is an act to provide criteria for admissions to the Montana Center for the Aged; Revising the transfer and discharge procedure. He said SENATE BILL 209 would identify the centers function as one for elderly with mild psychiatric impairment associated with the aging process - make clear to the courts and other mental health facilities, the general public and legislators as to -- the centers responsibilities and capabilities, and sets up guidelines for development of staffing programs and administrative staff. This change is consistent with the Department of Institutions goal of clarifying the specific mission of each state institution. As the mission of the Center for the Aged has changed to fit within the overall continuum of services, it is important that such change receive legislative sanction.

PROPOSERS:

CURT CHISHOLM, Deputy Director, Department of Institutions, said this piece of legislation was introduced because they wanted to clarify and get away from the ambiguity that has been surrounding the Center for the Aged for a number of years, especially since the passage of the Mental Health Act in 1975. We do not want to limit admission only to those people who are in Warm Springs or Galen. This legislation would clarify the mission of the Center and indicate it as a nursing home.

OPPOSERS: None

QUESTIONS:

REP. FARRIS: Are people in temporary need of nursing home care sent there and then back to Warm Springs or Galen, or is this a permanent placement for these individuals.

CURT CHISHOLM: It is a permanent placement.

REP. SWIFT: This wouldn't impact the younger age group from obtaining treatment?

CURT CHISHOLM: That is correct.

REP. FABREGA: On whose authority did you set up the 185%?

DR. PRATT: The authority of the block grant gave us in the regulations that stated that we could work with a poverty level

REP. FABREGA: To be on the safe side, you use the maximum.

DR. PRATT: It seemed by going through charts and getting people who knew what those figures meant, we could give the best care to the largest amount of children.

REP. WINSLOW: What kind of guidelines did we have when these were categorical.

YVONNE SULLIVAN: We had a complex method of determining eligibility to receive services. We used the slide scale and we discounted if the family had large medical bills.

REP. WINSLOW: It would difficult to see where they would be on the scale.

YVONNE SULLIVAN: The 185% of poverty is a high level. The truly needy do fall within the 150-185% of poverty level because they are not eligible from any other payment from any other source.

CHAIRMAN HART closed the hearing on SENATE BILL 200.

SENATE BILL 293

SEN. HAGER, sponsor. This bill revises the laws relating to certificates of need for health care facilities. The bill revises the provisions relating to when a certificate of need is required, and the process for obtaining the certificate. He stated there have been considerable changes in health care technology, health care demands and health care costs since 1979. The most recent available consumer price index indicates costs of goods and services have increased 25% while costs for medical care has increased by 11%. There is no question that some of the health care increases have been brought about by advancement in diagnosis and treatment technology. A good part of what certificate of need is all about is to see that those sizeable investments in technology and new services are made in a fair and logical manner in Montana. He discussed the proposed amendments.

PROPONENTS:

STEVEN PERLMUTTER, Attorney, Department of Health and Environmental sciences, read through the bill page by page. He stated that in drafting this bill, they attempted to achieve compliance and consistency. Their main concern was to address the needs of the state of Montana.

GARY WALSH, Administrator for the Economic Assistance Division for SRS, presented two amendments they would like to offer in relation to this legislation.

1. Page 12, line 24.

Following: "50,000"

Strike: \$100,000

Insert: \$50,000

2. Page 22, line 18.

Following: "conditions"

Strike: ", BUT ONLY IF THE SECRETARY OF THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES HAS APPROVED AN AMENDMENT TO THE STATE'S MEDICAID PLAN, ADOPTED PURSUANT TO 42 U.S.C. 1396A, ALLOWING FOR THE IMPOSITION OF SUCH CONDITIONS"

KEN RUTLEDGE, Vice-President, Montana Hospital Association, said since there appears to be genuine agreement on this bill with the exception of the two proposed amendments, he would not restate his reasons for supporting this legislation. He stated in changing the operating figure of \$100,000 back to \$50,000, they were talking about capital costs or depreciation costs associated with new services. Plus, they were talking about any kind of interest costs associated with financing and also those supplies that are needed. They were also talking if it requires the addition of staff--salary and benefits of that person. What they are saying, with the threshold of \$50,000 is that if you have one person and a few supplies and you add your capital costs, it would mean that just about any addition of services in a hospital--a minimal type of equipment would be covered. He checked to see what the neighboring states had in the area of thresholds for new institutional house services. The lowest was New Mexico with a figure of \$200,000. The majority of the states have figures in the amount of \$300,000 to \$400,000 before new institutional house services have to be reviewed. He thought the \$100,000 figure is very reasonable.

ROSE SKOOG, Executive Director, Montana Health Care Association, said they would like to go on record as supporting SENATE BILL 293. There is one area of concern to them in the bill and it has to do with the amendment proposed by the Department of SRS--on page 22, where the medicaid budget is tied to the certificate of need process. They support the bill as it is. They urge not to adopt the amendment offered by SRS. This provision applies only to long-term care facilities. If there was to be a new long-term care facility

of if there was to be an addition of beds to an existing long-term care facility, a certificate of need is required and we need to go through a particular process--make application, provide supporting documents and go through the hearing process. The certificate of need is then granted or denied based on whether or not the state health plan shows that there is a need for long-term care beds. The medicaid provision in this legislation says if there is a need determined but if SRS does not feel that the medicaid budget could afford for people to be in those beds, there could be a restriction placed on the certificate of need that says--yes, you may bill those beds because they are needed but medicaid recipients can't use them. Only people who can afford to pay for their own care can use them. It doesn't seem right that you would limit access to medicaid eligible people. Federal medicaid requirements preclude a state from limiting access of medicaid eligible people to a service. Because we were concerned that this provision was contrary to federal law, we did get a legal opinion from a Washington, D. C. law firm that deals with certificate of need problems on a regular basis (EXHIBIT 3). The opinion we are getting is that this kind of limiting of access is probably contrary to medicaid law but also to health planning law which makes sure that low-income people have access to care. We offered the sentence that is in there as a compromise. We feel that this provision is contrary to medicaid law and it would not be approved by the Secretary of Health and Human Services if the department submitted it. Rather than take that provision out completely, we said to put a provision in to make certain that they do go to the Department of Health and Human Services with a planned amendment. If the Department of Health and Human Services says that this scheme is legal, then it will be operational. If the planned amendment is not approved, this particular provision in this bill would not be able to become operational and we would continue to be in compliance with the federal medicaid law. When she offered the amendment to the Senate Committee, the Committee asked Mr. LaFavor whether or not that provision would be acceptable to him. He said it would. A couple of days later, he sent a memo over to the Committee saying he changed his mind. He talked to the feds and we don't really want to do this. She found out the representative that Mr. LaFavor talked to and found out she had strongly urged them not to be trying to put this kind of provision in place because it would probably wouldn't pass muster with the federal medicaid program.

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Minutes of the Meeting of the Human Services Committee
March 11, 1983

She sent word back to the Committee and explained that she had information slightly different from what they were getting some place else. If the department is so certain that it is an allowable process, she didn't know why they were so adamantly opposed to having drafts but she thought the provision was in there as a protection to make sure that they are in compliance with their medicaid program. If the feds decide it is all right, it will go into place. If it isn't, then we should not be out of compliance with the federal medicaid law, anyway. She strongly urged this bill be concurred in in its present form and not to accept the amendment.

ADA WEEDING, chairman of the eastern Montana Subarea Advisory Council and a member of the governing board of the Montana Health Systems Agency, said it is very important that, as a consumer, she have some input as to the health care system in this state, and more importantly, in her own local area (EXHIBIT 4).

SHARON DIEZIGER, representing the Montana Nurses' Association, said that during the past four years, the certificate of need law has served to reduce duplication of services, protect the stability of existing services, encourage long-range planning and promote cooperative service development. The stability offered by the certificate of need program has promoted private investment and acquisition while encouraging operating efficiencies. SENATE BILL 293 contains the series of amendments to the certificate of need law which have been developed to streamline the processing of applications and reduce the administrative burden on providers while maintaining the integrity of the certificate of need process as a cost control system. She opposed any attempt to amend this bill at this point (EXHIBIT 5).

JERRY LOENDORF, Montana Medical Association, said he supported the bill but would oppose the amendments offered today.

GEORGE FENNER, representing the Health Services and Medical Facilities Division of the Department of Health and Environmental Sciences, stated that all too often legislators are expected to balance the needs of conflicting interests. They are pleased to have contributed to the development of this compromise legislation and they urge its approval by this Committee in the form it is presently written (EXHIBIT 6).

OPPONENTS: None.

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March 11, 1983

SEN. HAGER closed saying the Committee did adopt the second amendment (page 22). It would give the Department of SRS an out and it did seem to satisfy the problems with the other people.

QUESTIONS:

REP. DRISCOLL: If there is a need for more rule, but there isn't any money, what are we going to do.

SEN. HAGER: This has to do with the medicaid budget. To make this budget, they figure how many beds they will have in the state. It is for them so they would be able to keep from having to O.K. more beds than they would have funds for.

REP. DRISCOLL: As I read the bill, it has to be approved for a certificate need for more beds for long-term care facilities. If that need is established, but there are no funds to pay--when patients go into those rooms and the Secretary of the U. S. Department of Health has not approved the amendment, then what does SRS do?

SEN. HAGER: The department has a right to make these rules if the federal government says we can do that.

ROSE SKOOG: The reason we are asking that this be approved through Health and Human Services is because federal law makes no provision for a state not to fund medicaid eligible people in a medicaid service once the state decides to opt into the medicaid program and provide that service. We think this is contrary to federal medicaid law.

REP. FABREGA: What happens if you get 100 more cases than what you anticipated in the biennium.

GARY WALSH: We have those outside limits and we have to live within that budget. If the amount of money we have available is not sufficient, we are obligated to cut back in terms of service in order to accomplish that to keep the program within the amount of budget we have.

REP. FABREGA: What you're saying is that by refusing to allow the availability of additional beds, you are going to be able to close your eyes to those that would be qualified because the beds don't exist.

GARY WALSH: Our intent is to come up with some provision that would allow us to contain the cost.

REP. FABREGA: Is it realistic to say if we could prevent the beds from developing, we have prevented the demand.

GARY WALSH: Our interest is primarily a financial one. We are obligated to stay within the budget as set forth in the Legislature.

REP. FABREGA: If the individuals qualify for medicaid beds, can you say--sorry, you qualify but there is no bed available.

GARY WALSH: There are some different factors to play into that. If an individual is eligible, then the access cannot be restricted to the service they are eligible for. It is our anticipation that we are able to tie in the number of beds to the budget.

REP. WINSLOW: I believe we put language into that--rather than cut those services, you are to come to the next legislature for supplemental monies. I know the department did not want to do that but it is the intent of this Legislature that those people receive those services.

GARY WALSH: Our concern is that the state law doesn't allow us that provision.

REP. WINSLOW: That is what you have been instructed to do.

REP. FABREGA: As I understand it, the long-term care is the number one mandate, is that correct?

GARY WALSH: Approximately half of the medicaid budget does go for long-term care. Under the existing medicaid plan, there are twelve mandatory as well as optional programs provided.

REP. WINSLOW: Does SRS have the right to drop optional services without legislative intent?

GARY WALSH: We would have to go through the administrative rules process.

REP. FABREGA: The language that you inserted in the Senate says that unless the Secretary of Health and Human Services approves a limitation of availability of long term care, that would not be a condition that SRS could impose.

ROSE SKOOG: That is correct.

REP. FABREGA: And your position is that medicaid long term is the priority in mandating?

ROSE SKOOG: Our position is that what the department is trying to do isn't permissible under the medicaid program.

REP. FABREGA: What is the cost of financing equipment?

HOSPITAL PERSONNEL: We are looking at taxable financing--higher rates--13 or 14%. The tax exempt rate would be below 10%. The majority of the construction that goes on is done at tax exempt financing.

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Minutes of the Meeting of the Human Services Committee
March 11, 1983

REP. FABREGA: Are the limits once a year or per project?

HOSPITAL PERSONNEL: The \$750,000 is per project.

REP. FABREGA: Is that on an annual basis?

HOSPITAL PERSONNEL: We are only talking about the offering of a service that has not been previously offered. The \$750,000 applies to any kind of capital expenditure regardless of what its purpose is. The \$500,000 figure refers to the purchase of a single piece of equipment.

CHAIRMAN HART closed the hearing on SENATE BILL 293.

EXECUTIVE ACTION

SENATE BILL 200

SEN. VAN VALKENBURG, sponsor. This bill requires the Department of Health and Environmental Sciences to adopt rules setting standards for participation in and operation of programs to protect the health of children and mothers, and handicapped children.

REP. FARRIS: Moved that SENATE BILL 200 BE CONCURRED IN.

REP. DRISCOLL: Moved that on page 3, line 14, insert stricken language.

REP. FABREGA: While I would agree in spirit that that is one way to stretch the money; if you pass on arbitrary reimbursement, there could be refusal except in cases for emergency.

REP. DRISCOLL: One group wants to have the department reimburse them at full costs of their expenses. If you reinsert that language and adopt rules for payment of services and if they are going to adopt rules for everything else, why not for that.

REP. WINSLOW: You are then saying you are willing to pick up the costs. If you don't have the money to operate, you are going to have to shift the costs to someone else.

REP. FARRIS: I speak in support of the amendment. All during December, people were talking to me about hospital cost containment. For hospitals or doctors, for that matter, to say to a state agency that they refuse to take medicaid or medicare patients simply because they feel they are not getting proper reimbursement for services, there has to be some way to cap these costs that go up and up. It is easiest to look at staff costs but there are areas of slack in all budgets that could be addressed.

I AM SHARON DIEZIGER. TODAY I AM REPRESENTING THE MONTANA NURSES' ASSOCIATION, HOWEVER, I AM ON THE MONTANA HEALTH SYSTEMS AGENCY GOVERNING BOARD AND THE GOVERNOR'S STATEWIDE HEALTH COORDINATING COUNCIL. I HAVE BEEN ACTIVE IN THESE ORGANIZATIONS FOR MANY YEARS.

DURING THE PAST FOUR YEARS, THE CERTIFICATE OF NEED LAW HAS SERVED TO REDUCE DUPLICATION OF SERVICES, PROTECT THE STABILITY OF EXISTING SERVICES, ENCOURAGE LONG-RANGE PLANNING AND PROMOTE COOPERATIVE SERVICE DEVELOPMENT. IN ADDITION, THE STABILITY OFFERED BY THE CERTIFICATE OF NEED PROGRAM HAS PROMOTED PRIVATE INVESTMENT AND ACQUISITION WHILE ENCOURAGING OPERATING EFFICIENCIES.

SENATE BILL 293 CONTAINS A SERIES OF AMENDMENTS TO THE CERTIFICATE OF NEED LAW WHICH HAVE BEEN DEVELOPED TO STREAMLINE THE PROCESSING OF APPLICATIONS AND REDUCE THE ADMINISTRATIVE BURDEN ON PROVIDERS WHILE MAINTAINING THE INTEGRITY OF THE CERTIFICATE OF NEED PROCESS AS A COST CONTROL SYSTEM.

THIS BILL IS THE RESULT OF SUCCESSFUL NEGOTIATION AND COMPROMISE BY REGULATORY AGENCIES, HEALTH CARE PROVIDERS AND CONSUMER REPRESENTATIVES. I URGE THIS COMMITTEE TO APPROVE SENATE BILL 293.

THIS COMMITTEE NOW HAS THE RESULTS OF TWO (2) MONTHS OF
NEGOTIATIONS AND COMPROMISES IN SENATE BILL 293. SUCH
ORGANIZATIONS AS THE DEPARTMENT OF HEALTH, THE MONTANA HOSPITAL
ASSOCIATION, THE MONTANA NURSES ASSOCIATION, THE MONTANA MEDICAL
ASSOCIATION, THE DEPARTMENT OF SOCIAL AND REHABILITATION
SERVICES, THE GOVERNOR'S OFFICE AND THE MONTANA HEALTH SYSTEMS
AGENCY HAVE ALL COOPERATED ON THIS PROJECT.

ALL TOO OFTEN LEGISLATORS ARE EXPECTED TO BALANCE THE NEEDS
OF CONFLICTING INTERESTS. WE ARE PLEASED TO HAVE CONTRIBUTED
TO THE DEVELOPMENT OF THIS COMPROMISE LEGISLATION AND WE URGE
ITS APPROVAL BY THIS COMMITTEE.

THANK YOU VERY MUCH.

EX6
SB29

TESTIMONY BY GEORGE M. FENNER ON SENATE BILL 293

BEFORE THE HUMAN SERVICES COMMITTEE, HOUSE OF REPRESENTATIVES, MARCH 11, 1983

CHAIRMAN HART, MEMBERS OF THE COMMITTEE:

MY NAME IS GEORGE M. FENNER. I REPRESENT THE HEALTH SERVICES AND MEDICAL FACILITIES DIVISION OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES.

THIS COMMITTEE NOW HAS THE RESULTS OF TWO ^{more than} (2) MONTHS OF NEGOTIATIONS AND COMPROMISES IN SENATE BILL 293. SUCH ORGANIZATIONS AS THE DEPARTMENT OF HEALTH, THE MONTANA HOSPITAL ASSOCIATION, THE MONTANA NURSES ASSOCIATION, THE MONTANA NURSING HOME ASSOCIATION, THE MONTANA MEDICAL ASSOCIATION, THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES, THE GOVERNOR'S OFFICE, AND THE MONTANA HEALTH SYSTEMS AGENCY HAVE ALL COOPERATED ON THIS PROJECT.

ALL TOO OFTEN LEGISLATORS ARE EXPECTED TO BALANCE THE NEEDS OF CONFLICTING INTERESTS. WE ARE PLEASED TO HAVE CONTRIBUTED TO THE DEVELOPMENT OF THIS COMPROMISE LEGISLATION AND WE URGE ITS APPROVAL BY THIS COMMITTEE. *In the form it is presently written.*

THANK YOU VERY MUCH.

George M. Fenner

VISITOR'S REGISTER

HOUSE HUMAN SERVICES COMMITTEE

BILL SENATE BILL 293 DATE 3-11-83

SPONSOR SENATOR HAGER

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MINUTES OF THE MEETING OF THE HUMAN SERVICES COMMITTEE
March 14, 1983

The meeting of the Human Services Committee held on Monday, March 14, 12:30 p.m. in Room 224A of the Capitol Building was called to order by Chairman Marjorie Hart. All members were present except Rep. Seifert, who was absent.

SENATE BILL 395

SEN. SMITH, sponsor. This bill would authorize the Departments of Social and Rehabilitation Services and Institutions to certify persons serving developmentally disabled persons in a professional capacity. The bill requires the departments to adopt rules concerning the certification. He said this bill doesn't change any existing law. It allows the SRS to adopt rules to qualify a professional who will then be the one who approves the one who is disabled who is placed in that institution. SENATE BILL 395 also has a companion bill, SENATE BILL 214. SENATE BILL 395 is the one that points out some of the things they want to do with SRS. SENATE BILL 214 is the Institutions bill and the reason they need the second bill is that if someone asks to have a person come out of the institution and go into a group home, it is then handled by SRS. They want to be able to adopt rules between the two functions of state government--SRS and Institutions.

PROPOSERS:

JUDITH CARLSON, Deputy Director, Department of Social and Rehabilitation Services, stated this bill will allow the Department of SRS to officially adopt rules to carry out a section of the law that is already in the law. She urged support of the bill (EXHIBIT 1).

CURT CHISHOLM, Deputy Director, Department of Institutions, said they also support this legislation. The companion bill deals with the Department of Institution's role in certifying mental health professionals. MRS. CARLSON is concerned with certification of developmentally disabled professionals. It is this person who is certified rather than an M.D., who is automatically certified in both cases. They must be certified to make the Developmentally Disabled Act or the Mental Health Act work. They have to testify in court. He urged consideration and passage of this legislation.

OPPOSERS: None

REP. DOZIER: Moved that SENATE BILL 410 BE CONCURRED IN.

REP. KEYSER: What the bill is trying to do is good but I wish if they are going to change this total bill that deals with dumping of the septic tanks, I wish they would have put a little more teeth in it so that it would enable State Lands to come under some priorities as far as the Department of Health and let them be able to do something with the counties where the people want to dump and don't have a site to do it.

REP. FABREGA: I understood that the county wishes to levy a fee on each septic tank and that is the way it would go about coming up with the money to establish a county sign. Wasn't that an option?

REP. SWIFT: I think that is available now.

REP. HANSEN: The people in Missoula who are not on the sewer system still pay the assessment fee and this covers the price of having septage treated.

The motion was voted and PASSED with REP. KEYSER voting no.

SENATE BILL 404

SEN. STEPHENS, sponsor. This bill would authorize SRS to designate an area office for aging services.

REP. FABREGA: Moved that SENATE BILL 404 BE CONCURRED in.

The motion was voted and PASSED with REP. FARRIS voting no.

SENATE BILL 293

SEN. HAGER, sponsor. This bill would generally revise and clarify laws relating to certificates of need for health care facilities.

REP. FABREGA: Moved that SENATE BILL 293 BE CONCURRED IN.

REP. FABREGA: He opposed the amendments.

The motion was voted and PASSED UNANIMOUSLY.

STANDING COMMITTEE REPORT

March 14, 19 03

MR. SPEAKER

We, your committee on HUMAN SERVICES

having had under consideration SENATE Bill No. 293

third reading copy (blue)
color

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO CERTIFICATES OF NEED FOR HEALTH CARE FACILITIES; AMENDING SECTIONS 50-5-101, 50-5-301, 50-5-302, 50-5-304 THROUGH 50-5-306, AND 50-5-308, MCA: AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Respectfully report as follows: That SENATE Bill No. 293

BE CONCURRED IN
DOUBT

SENATE BILL NO. 293

INTRODUCED BY HAGER, WINSLOW, MANUEL

BY REQUEST OF THE DEPARTMENT OF

HEALTH AND ENVIRONMENTAL SCIENCES AND

THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO CERTIFICATES OF NEED FOR HEALTH CARE FACILITIES; AMENDING SECTIONS 50-5-101, 50-5-301, 50-5-302, 50-5-304 THROUGH 50-5-306, AND 50-5-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE ~~AND DELAYED EFFECTIVE DATES.~~"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-5-101, MCA, is amended to read:

"50-5-101. Definitions. As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, free-standing or connected to another health care facility, which provides adults, on an intermittent basis, with the care necessary to meet the needs of daily living.

(3) "Affected persons" means the applicant, members of the public who are to be served by the proposal, health care

facilities located in the geographic area affected by the application, agencies which establish rates for health care facilities, ~~third-party payers who reimburse health care facilities in the area affected by the proposal,~~ and agencies which plan or assist in planning for such facilities, including any agency qualifying as a health systems agency pursuant to Title XV of the Public Health Service Act.

(4) "Ambulatory surgical facility" means a facility, not part of a hospital, which provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

(5) ~~"Batch" means those letters of intent and applications of a specified category and within a specified region of the state as established by department rule, that are accumulated during a single batching period.~~

~~(6) "Batching period" means a period, not exceeding 1 month, established by department rule during which letters of intent for specified categories of new institutional health services and for specified regions of the state may be accumulated pending further processing of all letters of intent within the batch.~~

~~(5)(7) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.~~

1 (81) "Capital expenditure" means an expenditure made by
2 or on behalf of a health care facility that, under generally
3 accepted accounting principles, is not properly chargeable
4 as an expense of operation and maintenance.

5 (67)(91) "Certificate of need" means a written
6 authorization by the department for a person to proceed with
7 a proposal subject to 50-5-301.

8 (101) "Challenge period" means a period, not exceeding 1
9 month, established by department rule during which any
10 person may apply for comparative review with an applicant
11 whose letter of intent has been received during the
12 preceding batching period.

13 (77)(111) "Clinical laboratory" means a facility for the
14 microbiological, serological, chemical, hematological,
15 radioassay, cytological, immunohematological,
16 pathological, or other examination of materials derived from
17 the human body for the purpose of providing information for
18 the diagnosis, prevention, or treatment of any disease or
19 assessment of a medical condition.

20 (87)(121) "College of American pathologists" means the
21 organization nationally recognized by that name with
22 headquarters in Traverse City, Michigan, that surveys
23 clinical laboratories upon their requests and accredits
24 clinical laboratories that it finds meet its standards and
25 requirements.

1 (13) "Comparative review" means a joint review of two
2 or more certificate of need applications within a given
3 batch which are determined by the department to be
4 competitive in that the granting of a certificate of need to
5 one of the applicants would substantially prejudice the
6 department's review of the other applications.

7 (97)(141) "Construction" means the physical erection of a
8 health care facility and any stage thereof, including ground
9 breaking, or remodeling, replacement, or renovation of an
10 existing health care facility.

11 (107)(151) "Department" means the department of health
12 and environmental sciences provided for in Title 2, chapter
13 15, part 21.

14 (117)(161) "Federal acts" means federal statutes for the
15 construction of health care facilities.

16 (127)(171) "Governmental unit" means the state, a state
17 agency, a county, municipality, or political subdivision of
18 the state, or an agency of a political subdivision.

19 (137)(181) "Health care facility" or "facility" means
20 any institution, building, or agency or portion thereof,
21 private or public, excluding federal facilities, whether
22 organized for profit or not, used, operated, or designed to
23 provide health services, medical treatment, or nursing,
24 rehabilitative, or preventive care to any person or persons.
25 The term does not include offices of private physicians or

dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospitals, infirmaries, kidney treatment centers, long-term care facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, and adult day-care centers.

~~(14)~~(121) "Health maintenance organization" means a public or private organization organized as defined in 42 U.S.C. 300e, as amended.

~~(120) "Health systems agency" means an entity which is organized and operated in the manner described in 42 U.S.C. 3001-2 and which is capable, as determined by the secretary of the United States department of health and human services, of performing each of the functions described in 42 U.S.C. 3001-2.~~

~~(15)~~(121) "Home health agency" means a public agency or private organization or subdivision thereof which is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

~~(16)~~(122) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of

injured, disabled, or sick persons. Services provided may or may not include obstetrical care, emergency care, or any other service as allowed by state licensing authority. A hospital has an organized medical staff which is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. This term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

~~(17)~~(123) "Infirmiry" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmiry--A" provides outpatient and inpatient care;

(b) an "infirmiry--B" provides outpatient care only.

~~(18)~~(124) "Joint commission on accreditation of hospitals" means the organization nationally recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants accreditation status to any health care facility that it finds meets its standards and requirements.

~~(19)~~(125) "Kidney treatment center" means a facility which specializes in treatment of kidney diseases, including freestanding hemodialysis units.

(20)(261) (a) "Long-term care facility" means a facility or part thereof which provides skilled nursing care or intermediate nursing care to a total of two or more persons or personal care to more than three persons who are not related to the owner or administrator by blood or marriage, with these degrees of care defined as follows:

(i) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(ii) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(iii) "Personal care" means the provision of services and care which do not require nursing skills to residents needing some assistance in performing the activities of daily living.

(b) Hotels, motels, boarding homes, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care are not long-term care facilities.

(271) "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions which is used to provide medical or other

health services and which costs more than the expenditure thresholds established in or pursuant to 58-5-201(2). The term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office or hospital and has been determined under Title XVIII of the Social Security Act to meet the requirements of paragraphs (1)(a) and (1)(b) of section 1861(a) of that act.

(22)(281) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients or the rehabilitation of such persons, or any combination of these services.

(22) "New institutional health services" means:

(a) the construction, development, or other establishment of a health care facility which did not previously exist;

(b) any expenditure by or on behalf of a health care facility within a 12-month period in excess of \$150,000, which, under generally accepted accounting principles consistently applied, is a capital expenditure whenever a health care facility or a person on behalf of a health care facility makes an acquisition under a lease or comparable arrangement or through donation which would have required

review--if--the--acquisition--had--been--by--purchaser--such
acquisition--shall--be--considered--a--capital--expenditure
subject-to-review

(c)--a-change-in-bed-capacity-of-a-health-care-facility
which--increases--or--decreases--the--total--number-of-beds
redistributes-beds--among--various--service--categories--or
relocates--such--beds--from-one-physical-facility-or-site-to
another-over-a-2-year-period-by-more-than-10-beds-or-10%--of
the-total-licensed-bed-capacity--whichever-is-less;

(d)--health--services--which--are--offered--in--or--through--a
health-care-facility--and--which--were--not--offered--on--a--regular
basis--in--or--through--such--health--care--facility--within--the
12-month--period--prior--to--the--time--such--services--would--be
offered--or--the--detention--by--a--health--care--facility--of--a
service--previously--offered;

(e)--the--expansion--of--a--geographic--service--area--of--a
home-health-agency.

(23)(129) "Nonprofit health care facility" means a
health care facility owned or operated by one or more
nonprofit corporations or associations.

(24)(130) "Observation bed" means a bed occupied for not
more than 6 hours by a patient recovering from surgery or
other treatment.

(25)(131) "Offer" means the holding out by a health care
facility that it can provide specific health services.

(26)(132) "Outpatient facility" means a facility,
located in or apart from a hospital, providing, under the
direction of a licensed physician, either diagnosis or
treatment, or both, to ambulatory patients in need of
medical, surgical, or mental care. An outpatient facility
may have observation beds.

(27)(133) "Patient" means an individual obtaining
services, including skilled nursing care, from a health care
facility.

(28)(134) "Person" means any individual, firm,
partnership, association, organization, agency, institution,
corporation, trust, estate, or governmental unit, whether
organized for profit or not.

(29)(135) "Public health center" means a publicly owned
facility providing health services, including laboratories,
clinics, and administrative offices.

(30)(136) "Rehabilitation facility" means a facility
which is operated for the primary purpose of assisting in
the rehabilitation of disabled persons by providing
comprehensive medical evaluations and services,
psychological and social services, or vocational evaluation
and training or any combination of these services and in
which the major portion of the services is furnished within
the facility.

(31)(137) "Resident" means a person who is in a

1 long-term care facility for intermediate or personal care.
 2 ~~{32}-"State-plan"-means-the-state-medical-facility-plan~~
 3 ~~provided-for-in-part-4-~~

4 ~~{38}"State health plan" means the plan prepared by the~~
 5 ~~department pursuant to 42 U.S.C. 300m-2(a)(2)."~~

6 Section 2. Section 50-5-301, MCA, is amended to read:

7 "50-5-301. When application certificate of need is
 8 required, (1) Unless a person has submitted an application
 9 has been submitted to and for and is the holder of a
 10 certificate of need granted by the department, no person he
 11 may not initiate any of the following:

12 ~~{1}-a-new-institutional-health-service-as-defined-in~~
 13 ~~50-5-101;~~

14 ~~{2}-any-expenditure-by-or-on-behalf-of-a-health-care~~
 15 ~~facility-in-excess-of-\$150,000-made-in-preparation-for-the~~
 16 ~~offering-or-development-of-a-new-institutional-health~~
 17 ~~service-and-any-arrangement-or-commitment-made-for-financing~~
 18 ~~the-offering-or-development-of-the-new-institutional-health~~
 19 ~~service--Expenditures-made-in-the-preparation-for-the~~
 20 ~~offering-of-a-new-institutional-health-service-shall-include~~
 21 ~~expenditures-for-architectural-designs, preliminary plans,~~
 22 ~~working drawings, specifications, studies, and surveys;~~

23 ~~{a}-the incurring of an obligation by or on behalf of~~
 24 ~~a health care facility for any capital expenditure, other~~
 25 ~~than to acquire an existing health care facility, that~~

1 exceeds the expenditure thresholds established in or
 2 pursuant to subsection (5). The costs of any studies,
 3 surveys, designs, plans, working drawings, specifications,
 4 and other activities including staff effort and consulting
 5 and other services essential to the acquisition,
 6 improvement, expansion, or replacement of any plant or
 7 equipment with respect to which an expenditure is made must
 8 be included in determining if the expenditure exceeds the
 9 expenditure thresholds.

10 (b) a change in the bed capacity of a health care
 11 facility by 10 beds or 10%, whichever is less, in any 2-year
 12 period through:

13 (i) an increase or decrease in the total number of
 14 beds;

15 (ii) a redistribution of beds among various categories;
 16 or

17 (iii) a relocation of beds from one physical facility
 18 or site to another;

19 (c) the addition of a health service that is offered
 20 by or on behalf of a health care facility which was not
 21 offered by or on behalf of the facility within the 12-month
 22 period before the month in which the service would be
 23 offered and which will result in additional annual operating
 24 and amortization expenses of \$50,000, \$100,000 or more;

25 (d) the acquisition by any person of major medical

1 equipmentx==in==determining==whether==medical==equipment==costs
2 more==than==the==expenditure==thresholds==established==in
3 subsection==151x==the==costs==of==studiesx==surveysx==designsx
4 plansx==working==drawingx==specificationx==and==other
5 activities==essential==to==acquiring==the==equipment==what==be
6 includedx==if==the==equipment==is==acquired==for==less==than==fair
7 market==valuex==the==term==“cost”==includes==the==fair==market
8 value. PROVIDED SUCH ACQUISITION WOULD HAVE REQUIRED A
9 CERTIFICATE OF NEED PURSUANT TO SUBSECTION (1)(A) OR (1)(C)
10 OF THIS SECTION, IE, IT HAD BEEN MADE BY OR ON BEHALF OF A
11 HEALTH CARE FACILITY.

12 (a) the incurring of an obligation for a capital
13 expenditure by any person to acquire an existing health care
14 facility if:

15 (i) the person has failed to submit the notice of
16 intent required by 50-5-302(3) or

17 (ii) the department finds within 30 days after it
18 receives the notice of intent required by 50-5-302(3) that
19 the acquisition will result in a change in the services or
20 bed capacity of the facility;

21 (f) the construction, development, or other
22 establishment of a health care facility which did not
23 previously exist or which is being replaced; or

24 (g) the expansion of the geographical service area of
25 a home health agency.

1 (2) For purposes of this section:

2 (a) “obligation for capital expenditure” does not
3 include the authorization of bond sales or the offering or
4 sale of bonds pursuant to the state long-range building
5 program under Title 17, chapter 2, part 4, and Title 18,
6 chapter 2, part 1.

7 (b) a health maintenance organization is to be
8 considered a health care facility except to the extent
9 exempted from certificate of need requirements as prescribed
10 in rules adopted by the department.

11 (3) A proposed change in a project associated with a
12 capital expenditure under subsections (1)(a) or (1)(b) for
13 which the department has previously issued a certificate of
14 need requires subsequent certificate of need review if the
15 change is proposed within 1 year after the date the activity
16 for which the capital expenditure was granted a certificate
17 of need is undertaken. As used in this subsection, a “change
18 in project” includes but is not limited to any change in the
19 bed capacity of a health care facility as described in
20 subsection (1)(b) and the addition or termination of a
21 health care service.

22 (4) If a person acquires an existing health care
23 facility without a certificate of need and proposes to
24 change within 1 year after the acquisition, the services or
25 bed capacity of the health care facility, the proposed

1 change requires a certificate of need if one would have been
2 required originally under subsection (1)(e).

3 (5) (a) Expenditure thresholds for certificate of need
4 review are established as follows:

5 (i) For acquisition of equipment, the expenditure
6 threshold is \$500,000.

7 (ii) For construction of health care facilities, the
8 expenditure threshold is \$750,000.

9 (b) The department may by rule establish thresholds
10 higher than those established in subsection (5)(a) if
11 necessary and appropriate to accomplish the objectives of
12 this part."

13 Section 3. Section 50-5-302, MCA, is amended to read:
14 "50-5-302. Application Notice of intent -- application
15 and review process. (1) The department may adopt rules
16 including but not limited to rules for:

17 (a) the form and content of notices of intent and
18 applications;

19 (b) the scheduling and consolidation of reviews of
20 similar proposals;

21 (c) the abbreviated review of a proposal that:

22 (i) does not significantly affect the cost or use of
23 health care;

24 (ii) is necessary to eliminate or prevent imminent
25 safety hazards or to repair or replace a facility damaged or

1 destroyed as a result of fire, storm, civil disturbance, or
2 any act of God;

3 (iii) is necessary to comply with licensure or
4 certification standards; or

5 (iv) has been approved by the legislature pursuant to
6 the long-range building program under Title 17, chapter 5,
7 part 4, and Title 18, chapter 2, part 1, providing the
8 legislative findings accompanying such approval give
9 consideration to the criteria of 50-5-304, and subject to
10 the provisions of [section 9];

11 (d) the format of public informational hearings and
12 reconsideration hearings; and

13 (e) the establishment of batching periods for
14 certificate of need applications for new beds, establishment
15 of new services, ~~expansion of existing services~~, and
16 replacement of health care facilities.

17 (2) At least 30 days before any person acquires or
18 enters into a contract to acquire an existing health care
19 facility, the person shall submit to the department and the
20 appropriate health systems agency a notice of his intent to
21 acquire the facility and of the services to be offered in
22 the facility and its bed capacity.

23 (3) Any person intending to initiate an activity
24 for which a certificate of need is required shall submit a
25 letter of intent to the department. After receipt the letter

1 of intent must be placed in the appropriate batch, if any.
 2 After expiration of the challenge period following the
 3 batching period in which the letter of intent was submitted
 4 or if no batching is required, after receipt of the letter
 5 of intent, the department shall send the applicant a person
 6 an application form requiring the submission of information
 7 considered necessary by the department to determine if the
 8 proposed activity meets the standards in 50-5-304. The form
 9 and content of the notification of intent and applications
 10 for certificates of need shall be prescribed by rule by the
 11 department.

12 (2) Within 15 calendar days after receipt of the
 13 application, the department shall determine whether it
 14 contains sufficient information to determine if the proposed
 15 activity meets the standards in 50-5-304 is complete. If,
 16 after the 15 days, the application is found incomplete, the
 17 department shall request the necessary additional
 18 information within 5 working days. Upon receipt of the
 19 additional information from the application, the department
 20 shall have 15 days to determine if the application is
 21 complete. If the department fails to make a determination
 22 as to the completeness of the application within the
 23 prescribed 15-day period, the application shall be deemed to
 24 be complete. If the applicant fails to submit the necessary
 25 additional information requested by the department by the

1 deadline as prescribed by department rules for considering
 2 such reviews, a new letter of intent and application must be
 3 submitted and the application will be dropped from the
 4 current batch.

5 (3) After the application has all applications in
 6 the current batch have been designated complete or, if an
 7 application does not require batching, after it is
 8 designated complete, notification must be sent to the
 9 applicant applicants and all other affected persons
 10 regarding the department's projected time schedule for
 11 review of the application and the review period time
 12 schedule applications. The review period for the an
 13 application may be no longer than 90 calendar days after the
 14 notice is sent unless a longer period is agreed to by the
 15 applicant or, if the application has been batched, by all
 16 applicants in the batch. All completed applications
 17 pertaining to similar types of services, facilities, or
 18 equipment affecting the same health service area may be
 19 considered in relation to each other. During the review
 20 period a public hearing may be held if requested by one or
 21 more an affected persons person or when considered
 22 appropriate by the department.

23 (4) The department shall, after considering all
 24 comments received during the review period, issue a
 25 certificate of need, with or without conditions, or reject

1 deny the application. The department shall notify the
 2 applicant and affected persons of its decision within 5
 3 working days after expiration of the review period. IF THE
 4 DEPARTMENT FAILS TO REACH A DECISION AND NOTIFY THE
 5 APPLICANT OF ITS DECISION WITHIN THE DEADLINES ESTABLISHED
 6 IN THIS SECTION AND IF THAT DELAY CONSTITUTES AN ABUSE OF
 7 THE DEPARTMENT'S DISCRETION, THE APPLICANT MAY APPLY TO
 8 DISTRICT COURT FOR A WRIT OF HABEAS CORPUS TO FORCE THE
 9 DEPARTMENT TO RENDER A DECISION."

10 Section 4. Section 50-5-304, MCA, is amended to read:
 11 "50-5-304. Review criteria, required findings, and
 12 standards. (1) The department shall by rule promulgate and
 13 utilize, as appropriate, specific criteria for reviewing
 14 certificate of need applications under this chapter,
 15 including but not limited to the following considerations
 16 and required findings:

17 (1)(a) the relationship of the health services being
 18 reviewed to the applicable health systems plan, state health
 19 plan, and annual implementation plan developed pursuant to
 20 Title XV of the Public Health Service Act, as amended;

21 (1)(b) the relationship of services reviewed to the
 22 long-range development plan, if any, of the person providing
 23 or proposing the services;

24 (1)(c) the need that the population served or to be
 25 served by the services has for the services;

1 (1)(d) the availability of less costly quality
 2 equivalent or more effective alternative methods of
 3 providing such services;

4 (1)(e) the immediate and long-term financial
 5 feasibility of the proposal as well as the probable impact
 6 of the proposal on the costs of and charges for providing
 7 health services by the person proposing the health service;

8 (1)(f) the relationship and financial impact of the
 9 services proposed to be provided to the existing health care
 10 system of the area in which such services are proposed to be
 11 provided and the consistency of the proposal with joint
 12 planning efforts by health care providers in the area;

13 (1)(g) the availability of resources, including health
 14 manpower, management personnel, and funds for capital and
 15 operating needs for the provision of services proposed to be
 16 provided and the availability of alternative uses of such
 17 resources for the provision of other health services;

18 (1)(h) the relationship, including the organizational
 19 relationship, of the health services proposed to be provided
 20 to ancillary or support services;

21 (1)(i) the special needs and circumstances of those
 22 entities which provide a substantial portion of their
 23 services or resources, or both, to individuals not residing
 24 in the health service areas in which the entities are
 25 located or in adjacent health service areas. Such entities

1 may include medical and other health profession schools,
2 multidisciplinary clinics, and specialty centers.

3 ~~++0++~~ the special needs and circumstances of health
4 maintenance organizations for which assistance may be
5 provided under Title XIII of the Public Health Service Act.
6 Such needs and circumstances include the needs of and costs
7 to members and projected members of the health maintenance
8 organization in obtaining health services and the potential
9 for a reduction in the use of inpatient care in the
10 community through an extension of preventive health services
11 and the provision of more systematic and comprehensive
12 health services.

13 ~~+++~~ the special needs and circumstances of
14 biomedical and behavioral research projects which are
15 designed to meet a national need and for which local
16 conditions offer special advantages;

17 ~~++2++~~ in the case of a construction project, the
18 costs and methods of the proposed construction, including
19 the costs and methods of energy provision, and the probable
20 impact of the construction project reviewed on the costs of
21 providing health services by the person proposing the
22 construction project;

23 ~~+++~~ the distance, convenience, cost of
24 transportation, and accessibility of health services for
25 persons who live outside urban areas in relation to the

1 proposal; and

2 ~~+++~~ any other criteria, required findings, or
3 requirements for reviewing certificate of need applications
4 cited in the federal regulations found in Title 42, CFR,
5 Part 123, as amended.

6 ~~(21. If an application for new long-term care beds will~~
7 ~~involve new or increased use of medicaid funds and the~~
8 ~~department of social and rehabilitation services determines~~
9 ~~that such use would cause the state medicaid budget for~~
10 ~~long-term care facilities to be exceeded, the department of~~
11 ~~health and environmental sciences may impose conditions on a~~
12 ~~certificate of need for new long-term care beds, including~~
13 ~~limitation on the number of approved beds which may be~~
14 ~~certified for medicaid patients. Availability of medicaid~~
15 ~~funding may be the basis for imposing conditions but may not~~
16 ~~be the sole basis for denial of a certificate of need. THE~~
17 ~~DEPARTMENT MAY ADOPT RULES FOR THE IMPOSITION OF SUCH~~
18 ~~CONDITIONS, BUT ONLY IF THE SECRETARY OF THE UNITED STATES~~
19 ~~DEPARTMENT OF HEALTH AND HUMAN SERVICES HAS APPROVED AN~~
20 ~~AMENDMENT TO THE STATE'S MEDICAID PLAN, ADOPTED PURSUANT TO~~
21 ~~42 U.S.C. 1396A, ALLOWING FOR THE IMPOSITION OF SUCH~~
22 ~~CONDITIONS."~~

23 Section 5. Section 50-5-305, MCA, is amended to read:
24 "50-5-305. Period of validity of approved application.
25 * ~~11. Unless an extension is granted pursuant to subsection~~

(2) a certificate of need shall terminate 1 year after the date of issuance unless expire:

(1) the applicant has commenced construction if the project provides for construction or has incurred an enforceable capital expenditure commitment for projects not involving construction; or

(2) the certificate of need validity period is extended by the department for one additional period of 6 months upon showing good cause by the applicant for the extension.

(a) 1 year after its issuance if the applicant has not commenced construction on a project requiring construction or has not incurred an enforceable capital expenditure commitment for a project not requiring construction;

(b) 1 year from the estimated time for completion as shown in the application if the approved project is not completed; or

(c) when the department determines, after opportunity for a hearing, that the holder of the certificate of need has violated the provisions of this chapter, rules adopted hereunder, or the terms of the certificate of need.

(3) The holder of an unexpired certificate of need may apply to the department to extend the term of the certificate of need for one additional period not to exceed 6 months. The department may grant such an extension upon

the applicant's demonstrating good cause as defined by department rules.

(3) The holder of an unexpired certificate of need shall report to the department in writing on the status of his project at the end of each 90-day period after being granted a certificate of need until completion of the project for which the certificate of need was issued."

Section 6. Section 50-5-306, MCA, is amended to read:

"50-5-306. Right to hearing and appeal. (1) The applicant or a health systems agency designated pursuant to Title XV of the Public Health Service Act an affected person may request and shall be granted a public hearing before the department to hold a public hearing and to reconsider its decision if the request is received by the department within 30 calendar days after the decision is announced. Any other affected person may, for good cause, request the department to reconsider its decision at such a hearing. The department shall grant the request if the affected person submits the request in writing showing good cause as defined in rules adopted by the department and if the request is received by the department within 30 20 calendar days after the initial decision is announced. The public hearing to reconsider shall be held, if warranted or required, within 30 20 calendar days after its request. The department shall make its final decision and written

findings of fact and conclusions of law in support thereof within 45 30 days after the conclusion of the reconsideration hearing. ~~The hearing shall be conducted in accordance with 2-4-601 through 2-4-623.~~

(2) ~~An aggrieved applicant or a health systems agency designated pursuant to Title XV of the Public Health Service Act affected person~~ may appeal the department's final decision to the board by filing a written notice of appeal stating the specific findings of fact and conclusions of law being appealed and the grounds. ~~An affected person does not have to request the department to hold a reconsideration hearing prior to filing an administrative appeal to the board.~~ The notice of appeal must be received by the board within 30 calendar days after formal notice of the department's final decision was issued. The board shall give public notice of the appeal within 10 days, and the hearing shall be held within 30 days after receipt of the notice of appeal.

(3) ~~The scope of the hearing before the board is limited to a review of the record upon which the department made its decision must be a hearing de novo with respect to the findings and conclusions identified pursuant to subsection (2) and must be conducted pursuant to the contested case provisions of the Montana Administrative Procedure Act. The board upon request of any party to an~~

~~appeal before the board shall hear oral arguments and receive written briefs. Within 45 calendar days after the conclusion of the public hearing, the board shall make and issue its decision, supported by written findings of fact and conclusions of law. The board may affirm, reverse, or modify the department's decision or remand it for further proceedings. The board may reverse or modify the department's decision if the appellant's rights have been prejudiced for any of the reasons found in 2-4-704.~~

(4) The final decision of the board shall be considered the decision of the department for purposes of an appeal to district court. Any affected person may appeal this decision to the district court as provided in Title 2, chapter 4, part 7.

(5) The department may by rule prescribe in greater detail the hearing and appellate procedures."

Section 7. Section 50-5-308, MCA, is amended to read:

"50-5-308. Special circumstances. ~~In the event of destruction of any part of a health care facility as a result of fire, storm, civil disturbance or any act of God, the department may issue a certificate of need for only the replacement of the previously existing facility or portion thereof. The department shall issue a certificate of need for a proposed capital expenditure if:~~

~~(1) the capital expenditure is required to eliminate~~

~~or prevent imminent safety hazards as defined by federal, state, or local fire, building, or life safety codes or regulations or to comply with state licensure, certification, or accreditation standards; and~~

~~(2) the department has determined that the facility or service for which the capital expenditure is proposed is needed and that the obligation of the capital expenditure is consistent with the state health plan."~~

NEW SECTION. Section 8. Report and recommendations to legislature on medicaid funding. (1) At the commencement of each legislative session, the department of social and rehabilitation services shall submit a report to the legislature concerning medicaid funding for the next biennium. This report must include at least the following elements:

(a) analysis of past and present funding levels for the various categories and types of health services eligible for medicaid reimbursement;

(b) projected increased medicaid funding needs for the next biennium. These projections shall identify the effects of projected population growth and demographic patterns on at least the following elements:

(i) trends in unit costs for services, including inflation;

(ii) trends in use of services;

(iii) trends in medicaid recipient levels; and

(iv) the effects of new and projected facilities and services for which a need has been identified in the state health plan prepared pursuant to 42 U.S.C. 300m-2(a)(2).

(2) In addition to the report, the department of social and rehabilitation services shall present a recommendation of funding levels for the medicaid program. The recommendation need not be consistent with the state health plan.

(3) In arriving at the projections and recommendation required in subsections (1) and (2), the department of social and rehabilitation services shall consult with the department of health and environmental sciences.

(4) In making its appropriations for medicaid funding, the legislature shall specify the portions of medicaid funding anticipated to be allocated to specific categories and types of health care services.

NEW SECTION. Section 9. Exemptions from certificate of need review. (1) Except as provided in subsection (2), the following are exempt from certificate of need review:

(a) expenditures by a health care facility for nonmedical and nonclinical facilities and services unrelated to the operation of the health care facility if a letter of intent is submitted pursuant to 50-5-302 at least 30 days prior to incurring an obligation for capital expenditures to

1 enable the department to determine whether the expenditures
2 are exempt;

3 (b) a project proposed by an agency of state
4 government that has been approved by the legislature
5 pursuant to the long-range building program under Title 17,
6 chapter 5, part 4, and Title 18, chapter 2, part 1.

7 (2) If the secretary of the United States department
8 of health and human services notifies the state that the
9 sanctions provided by section 1521 of the Public Health
10 Service Act and all acts amendatory thereto or any other
11 federal statute for noncompliance with federal certificate
12 of need requirements are to be imposed, the department may
13 by rule require certificate of need review for projects
14 exempted by subsection (1) that are otherwise subject to the
15 provisions of this part. Any rule adopted by the department
16 under this subsection is effective only until the 10th day
17 of the next regular legislative session following the
18 adoption of the rule.

19 NEW SECTION. Section 10. Codification instructions.
20 (1) Section 8 is intended to be codified as an integral part
21 of Title 53, chapter 6, part 1, and the provisions of Title
22 53, chapter 6, part 1, apply to section 8.

23 (2) Section 9 is intended to be codified as an
24 integral part of Title 50, chapter 5, part 3, and the
25 provisions of Title 50, chapter 5, apply to section 9.

1 NEW SECTION. Section 11. Severability. If a part of
2 this act is invalid, all valid parts that are severable from
3 the invalid part remain in effect. If a part of this act is
4 invalid in one or more of its applications, the part remains
5 in effect in all valid applications that are severable from
6 the invalid applications.

7 NEW SECTION. Section 12. Saving clause. This act does
8 not affect rights and duties that matured, penalties that
9 were incurred, or proceedings that were begun before the
10 effective date of this act.

11 NEW SECTION. Section 13. Effective date. DATES. (1)
12 This act is effective on passage and approval, WITH DELAYED
13 EFFECTIVE DATES.

14 (2) ON JULY 1, 1987, 50-5-301, 50-5-302, AND 50-5-304
15 THROUGH 50-5-308, MCA, AND SECTIONS 8 THROUGH 10 HEREOF ARE
16 REPEALED UNLESS REENACTED BY THE LEGISLATURE.

17 (3) ON JULY 1, 1987, 50-5-101, MCA, IS AMENDED BY
18 DELETING SUBSECTIONS (3), (5), (6), (8), (9), (10), (11),
19 (14), AND (27) UNLESS REENACTED BY THE LEGISLATURE.

20 (4) ON JULY 1, 1987, 50-5-106, MCA, IS AMENDED TO READ
21 AS FOLLOWS, UNLESS REENACTED BY THE LEGISLATURE:

22 "50-5-106. Records and reports required of health care
23 facilities -- confidentiality. Health care facilities shall
24 keep records and make reports as required by the department.
25 Before February 1 of each year, every licensed health care

1 facility shall submit an annual report for the preceding
 2 calendar year to the department. The report shall be on
 3 forms and contain information specified by the department.
 4 Information received by the department or board through
 5 reports, inspections, or provisions of parts 1 and 2 may not
 6 be disclosed in a way which would identify patients. A
 7 department employee who discloses information which would
 8 identify a patient shall be dismissed from employment and
 9 subject to the provision of 45-7-401, unless the disclosure
 10 was authorized in writing by the patient, his guardian, or
 11 his agent. Information and statistical reports from health
 12 care facilities which are considered necessary by the
 13 department for health planning and resource development
 14 activities will be made available to the public and the
 15 health planning agencies within the state. ~~Applications by~~
 16 ~~health-care-facilities-for--certificates--of--need--and--any~~
 17 ~~information---relevant---to---review---of---these---applications,~~
 18 ~~pursuant-to-part-3, shall be accessible to the public."~~

-End-